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Rules and Regulations

Federal Register
Vol. 66, No. 104
Wednesday, May 30, 2001

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–00–010]

RIN 0581–AB57

Revision of User Fees for 2001 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2001 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2000. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2000 user fee for this classification service was $1.35 per bale. This final rule would maintain the fee for the 2001 crop at $1.35 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

EFFECTIVE DATE: July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Cotton Program, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 23, 2001. (66 FR 20408). A 15-day comment period was provided for interested persons to respond to the proposed rule. No comments were received, and no changes have been made in the provisions of the final rule.

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.201). Continuing the user fee at the 2000 crop level will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services (the 2000 user fee for classification services was $1.35 per bale; the fee for the 2001 crop will be maintained at $1.35 per bale; the 2001 crop is estimated at 18,337,850 bales);

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2000 crop, 17,219,500 bales were produced; and, virtually all of them were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 1999 crop of 45 cents per pound, 500 pound bales of cotton are worth an average of $225 each. The user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

These changes will be made effective July 1, 2001, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.35 per bale during the 2000 harvest season, as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This final rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 2001 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2000. Therefore, the 2001 producer's user fee for classification service is based on the 2000 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2000 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.17 per bale. An increase of 2.26 percent, or 5 cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.17 would result in a 2001 base fee of $2.22 per bale. The formula in the Act provides for the use of the percentage change in the implicit

price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by the gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy. The number of bales to be classed by the United States Department of Agriculture from the 2001 crop is estimated at 18,337,850 bales. The 2001 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 33 cents per bale reduction and was subtracted from the 2001 base fee of $2.22 per bale, resulting in a fee of $1.89 per bale.

With a fee of $1.89 per bale, the projected operating reserve would be 51.56 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.89 must be reduced by 54 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2001 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.35 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c). Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910 (a) to reflect the costs of providing this service. Requests for punch card classification data represented less than 1.0 percent of the total bales classed from the 2000 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer-punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of 10 cents per card would be charged. The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be maintained at $1.35 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—COTTON CLASSING TESTING STANDARDS

1. The authority citation for 7 CFR Part 28, Subpart D—Cotton Classification and Market News Services for Producers, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: May 23, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–13562 Filed 5–25–01; 10:50 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV01–928–1 IFR]

Papayas Grown in Hawaii; Suspension of Grade, Inspection, and Related Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule indefinitely suspends the grade, inspection, inspection waiver procedures, and related exempt shipment reporting requirements under the marketing order regulating papayas grown in Hawaii, due to current overproduction and unprecedented low prices for fresh papayas. These requirements went into effect on January 2, 2001. This action results from a unanimous recommendation of the Papaya Administrative Committee (committee or PAC) at an emergency meeting on December 28, 2000. This action is expected to permit the industry to utilize funds earmarked for inspection for enhanced marketing efforts, thus improving producer returns by increasing consumer demand.

DATES: Effective May 31, 2001; comments received by July 30, 2001 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 155 and Marketing Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends three sections of the order's rules and regulations regarding minimum grade requirements (§ 928.313), maturity exemptions (§ 928.152), and inspection waiver procedures (§ 928.150). It also amends § 928.160 of the order's rules and regulations. The amendment to § 928.160 removes references to mandatory regulations and relieves handlers from the requirement to add the inspection certificate number on PAC Form 1, Papaya Utilization.

This rule results from a unanimous recommendation of the committee at an emergency meeting on December 28, 2000. At that meeting, the committee recommended postponing, until July 1, 2001, the effective date of a final rule published by the Department on November 22, 2000, which reinstated grade, inspection, and related reporting requirements, effective January 2, 2001. The committee held a subsequent committee meeting on January 11, 2001, at which further public discussion was held. After considering the committee's recommendation and other relevant information, the Department is suspending, for an indefinite period, the requirements that were reinstated on January 2, 2001.

Section 928.52 of the papaya marketing order authorizes the establishment of grade, size, quality, maturity, and pack and container regulations for shipments of papayas. Section 928.53 allows for the modification, suspension, or termination of such regulations when warranted. Section 928.55 provides that whenever papayas are regulated pursuant to §§ 928.52 or 928.53, such papayas must be inspected by the inspection service and certified as meeting the applicable requirements. The cost of inspection and certification is borne by handlers. Section 928.54 authorizes regulation exemptions when shipping papayas for commercial processing, relief agencies, or charitable institutions. In addition, the Secretary may relieve from any or all requirements under or established pursuant to §§ 928.41, 928.52, 928.53, and 928.55, the handling of papayas in such minimum quantities, in such types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 928.45) as the committee, with the approval of the Secretary, may prescribe. Section 928.60 of the papaya marketing order authorizes handler reporting requirements.

This rule suspends § 928.313 of the order s rules and regulations regarding minimum grade requirements. That section states that no handler shall ship papayas to any destination unless such papayas meet the minimum grade of Hawaii No 1.

This rule also removes the requirement that handlers obtain inspection through the Federal or Federal-State Inspection Service (inspection service) prior to shipment of fresh papayas. Suspension of the inspection waiver procedures in § 928.150 of the order's rules and regulations results in the elimination of the authority of the inspection service to grant inspection waivers. Inspection waivers allow handlers to ship papayas without inspection under certain conditions when it is not practicable for the inspection service to provide such inspection. In the absence of mandatory inspection, handlers do not need inspection waivers issued by the inspection service.

This rule also suspends the maturity exemption and related reporting requirements in § 928.152 of the order's rules and regulations to remove the requirement that handlers interested in becoming handlers of immature papayas apply to the committee for approval, and report handling of immature papayas. Immature papayas are used in a popular dish called green papaya salad and as a vegetable substitute in recipes. Suspension of the maturity exemption and related reporting requirements relieves handlers from filing PAC Forms 7 and 7(c) with the committee.

In addition, this rule amends § 928.160 to remove the references to mandatory regulations and the requirement that handlers include the number of the inspection certificate issued by the inspection service on each PAC Form 1 filed with the committee.

Grade, inspection, and reporting requirements under the order were suspended in 1994. As previously mentioned, in a final rule published on November 22, 2000, and effective January 2, 2001, the Department reinstated those requirements under §§ 928.150, 928.152, 928.313, and 928.160 of the order's rules and regulations.

The committee met on December 28, 2000, and voted unanimously to postpone the effective date until July 1, 2001. During that meeting, and a subsequent meeting on January 11, 2001, the committee noted that producer prices currently range from 6 to 12 cents per pound, compared to 25 to 45 cents per pound reported by the committee for the same period the previous year. Such prices, coupled with overproduction, have had a negative effect on the entire industry, especially for the new Rainbow variety of papayas. The Rainbow variety has been developed to tolerate the effects of the Papaya Ringspot Virus, which has decimated papaya trees in Hawaii for several years. The Rainbow variety,

however, has not yet been approved for exportation to possible significant markets, especially Japan or Canada, and is only marketed in the United States.

Given the current marketing limitations and overproduction of papayas, the committee recommended that funds earmarked for inspection costs be redirected to marketing and promotion in an effort to increase demand and improve returns to producers. Currently, with low prices to producers, there is little money available for inspection. What funds are available, the committee believes, would best be utilized in increasing demand by enhanced marketing and promotion activities at this time. The committee proposed to review the condition of the industry in late spring or early summer to determine if overproduction has eased or demand improved. Historically, the summer months result in lower production, due to the reduced availability of rainwater. This has been true for most varieties of papayas, and may also be true for the Rainbow variety. This information would place the committee in a better position to evaluate what further recommendations to make in the interests of the industry.

While the committee recommended a postponement of the effective date for implementing mandatory grade, inspection, and related reporting requirements until July 1, 2001, the Department believes that a suspension of the requirements is preferable at this time. First, the emergency recommendation was made five days prior to the effective date of the regulations, January 2, 2001. Since that time inspections of papayas have not occurred. Second, the committee does not yet have a timetable for entry of the new Rainbow variety of papayas into the export markets to which the traditional variety, Kapoho, currently has entry. The committee believes increased demand would help absorb the current overproduction of the prolific Rainbow variety, and have a positive affect on producer returns. Third, the committee also believes that enhanced marketing and promotion may also improve demand for all fresh papayas. The committee believes that funds earmarked for inspection costs would be better utilized on promotional efforts. Thus, there would be no funds available later in the fiscal year for implementing mandatory inspection. There is no evidence that the conditions that currently exist in the industry would be greatly improved in the next several months.

For these reasons, the mandatory grade, inspection, and reporting requirements effective January 2, 2001, are suspended until such time as the conditions in the industry improve and the committee can demonstrate a long-term commitment to a quality control program.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a reported current average f.o.b. price of $.65 per pound of papayas, a handler would have to ship in excess of 7.69 million pounds of papayas to have annual receipts of $5,000,000. Last year, only one handler shipped more than 7.69 million pounds of papayas, and, therefore, could be considered a large business. The remaining handlers could be considered small businesses, excluding receipts from other sources.

Based on a reported current average grower price of $0.09 per pound and annual industry shipments of 40 million pounds, total grower revenues would be $3.6 million. Average annual grower revenue would, thus, be $9,000. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This rule suspends the grade, inspection, and related reporting requirements under the order's rules and regulations. As a result,§§ 928.150, 928.152, and 928.313 are suspended in their entirety, and § 928.160 is amended to remove the reference to mandatory regulations and the requirement that the inspection certificate number be added to the utilization reports filed by handlers.

At the meeting, the committee discussed the impact of these changes on handlers and producers in terms of cost. Since mandatory inspection and certification costs are borne by handlers, the cost savings to each handler are estimated to be a total $24.24 per hour for on-site inspections. In addition, the inspection service charges mileage costs of $.37 per mile round trip from the inspection service office to the handler's premises or processing plant. According to the inspection service, for a trip taking 10 or more minutes, or covering 7 or more miles, the travel time cost is based on the $24.24 hourly rate. Some handlers could pass the inspection costs onto producers, thus, further decreasing overall producer returns. These costs do not apply in the absence of minimum quality requirements and associated mandatory inspection.

During its deliberations, the committee discussed possible alternatives to this action. They deliberated the impacts of the final rule taking effect on January 2, 2001. However, because economic conditions in the papaya industry are currently at a historically low level, the committee rejected that alternative.

The committee also debated the value of suspending, rather than postponing, the regulations in their entirety. That alternative, however, was also rejected, as the committee felt suspension of the regulations was too drastic an action to take at the time. Instead, the committee proposed postponing the effective date of the requirements until July 1, 2001, and further reviewing the conditions within the industry at that time. The requirements were originally suspended beginning on July 1, 1994.

However, as noted earlier, the Department has determined that a suspension of the requirements is preferable, given the current industry conditions and likelihood that there will be no substantial improvement in the next several months. If industry conditions improve, implementation of the quality control program could again be recommended by the committee. Accordingly, this action will have a favorable effect on both large and small entities.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102.

This rule relaxes reporting requirements under the order, since

PAC Form 1 will no longer require the addition of the inspection certificate number on it. In addition, PAC Forms 7 and 7(c) will not be required from handlers wishing to be approved handlers of immature papayas. In the absence of mandatory inspection, no handlers will be required to apply for approval to handle immature papayas using PAC Form 7 nor report shipments of immature papayas to the committee using PAC Form 7(c). This rule will decrease the burden by 9.25 hours.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the committee's meetings were widely publicized throughout the papaya industry and all interested persons were encouraged to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the December 28, 2000, and the subsequent January 11, 2001, meetings were public meetings and all entities, both large and small, were encouraged to express views on this issue. The committee itself is comprised of 13 members, consisting of nine producer members and three handlers members. The committee also includes a public member who does not represent an agricultural interest nor have a financial interest in papayas. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that the suspensions and revision made by this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in effect as soon as possible to continue to provide relief to the Hawaii papaya industry; (2) this action reflects the emergency recommendation of the committee and the Department's assessment of the industry; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 928.150, 928.152, 928.313 [Suspended]

2. Sections 928.150, 928.152, and 928.313 are indefinitely suspended in their entirety.

3. In § 928.160, paragraph (a)(1) is revised to read as follows:

§ 928.160 Utilization reports.

(a) * * *

(1) Quantity of papayas handled subject to assessments including the date and destination of each shipment;

* * * * *

Dated: May 21, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–13472 Filed 5–29–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 285

[Docket No.: 000831249–1129–02]

RIN 0693–ZA39

National Voluntary Laboratory Accreditation Program; Operating Procedures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, is today issuing a final rule revising regulations found at 15 CFR part 285 pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). The NVLAP procedures are revised to ensure continued consistency with international standards and guidelines currently set forth in the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) 17025:1999, *General requirements for the competence of testing and calibration laboratories,* and ISO/IEC Guide 58:1993, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,* thereby facilitating and promoting acceptance of test and calibration results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies, assist in the exchange of information and experience and in the harmonization of standards and procedures, and establish the basis for national and international mutual recognition arrangements.

In addition, NIST is reorganizing and simplifying part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST is rewriting in plain English and consolidating sections previously contained in subparts A through C of part 285.

DATES: This rule is effective June 29, 2001.

ADDRESSES: David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140.

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Chief, National Voluntary Laboratory Accreditation Program, 301–975–4016.

SUPPLEMENTARY INFORMATION:

Background

Part 285 of title 15 of the Code of Federal Regulations sets out procedures and general requirements under which the National Voluntary Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories.

The NVLAP procedures were first published in the **Federal Register** as part 7 of title 15 of the Code of Federal Regulations (CFR) (41 FR 8163, February 25, 1976). On June 2, 1994, the procedures were redesignated as part 285 of title 15 of the CFR, expanded to

include accreditation of calibration laboratories, and updated to be compatible with conformity assurance and assessment concepts, including the provisions contained in ISO/IEC Guide 25:1990, *General requirements for the competence of calibration and testing laboratories* (59 FR 22742, May 3, 1994).

Description and Explanation of Proposed Changes

The NVLAP procedures found at 15 CFR Part 285 are revised to ensure continued consistency with international standards and guidelines. At this time, the management and technical requirements of the new standard, ISO/IEC 17025:1999, *General requirements for the competence of testing and calibration laboratories,* and the internationally accepted requirements for accrediting bodies, including those found in ISO/IEC Guide 58:1993, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition,* are applicable; however, the revisions include provisions allowing for updated versions and replacements of these documents. ISO/IEC 17025:1999 supersedes and replaces ISO/IEC Guide 25:1990, upon which the current NVLAP accreditation criteria are based.

In addition, NIST is reorganizing and simplifying part 285 for ease of use and understanding. While the existing regulations accurately set forth the NVLAP procedures, the regulations themselves are complex and difficult to understand. In an effort to simplify the format and make the regulations more user friendly, NIST is rewriting in plain English and consolidating sections previously contained in subparts A through C of part 285. Since the consolidated format does not require subparts, NIST is removing subparts A through C. The removal of these subparts will not alter the operations of NVLAP, but will promote ease of use and facilitate understanding of the program's operations.

To ensure continued consistency with applicable international standards and guidelines, NIST is removing subpart D, Conditions and Criteria for Accreditation, and is applying the conditions and criteria contained in the applicable internationally accepted documents as they are revised from time to time, as set forth in new section 285.14, Criteria for Accreditation.

Summary of Comments

On November 7, 2000, the National Institute of Standards and Technology published a notice of proposed rulemaking in the **Federal Register** (65 FR 66659). In response, four letters were received from operators of NVLAP-accredited testing laboratories. The respondents applauded NIST's efforts to revise NVLAP procedures to ensure consistency with ISO/IEC standards and guides and make several specific recommendations, which are addressed below.

Comment. The four respondents noted that the proposed rule references the term *NVLAP* as a federally registered certification mark, and stated that this is the first instance they had ever seen the mark of an accreditation body referred to as a certification mark and also one that is federally registered. The respondents recommended that an explanation be given on why this reference is made and what its impact will be on NVLAP-accredited laboratories.

Response: The name ''National Voluntary Laboratory Accreditation Program'' and the acronym ''NVLAP'' have been in use since the announcement of the formal inception of the program on February 25, 1976. The NVLAP logo was first used in interstate commerce on March 17, 1980, and was first registered with the U.S. Patent and Trademark Office as a certification mark on March 22, 1983. Application for registration of the term *NVLAP* as a certification mark was filed with the U.S. Patent and Trademark Office on November 30, 2000. Registration of the term *NVLAP* is meant to strengthen NIST's rights in the mark. The registration will have no impact on NVLAP-accredited laboratories.

The final rule, section 285.3, Referencing NVLAP accreditation, states: ''NIST reserves the right to control the quality of the use of term *NVLAP* and of the logo itself.'' Control of the term and the logo benefits NVLAP-accredited laboratories by promoting confidence that test and calibration reports endorsed with these certification marks will be accepted by economies throughout the world.

Comment: Three respondents wrote that under the proposed new regulations, the termination of a LAP rests with the Chief of NVLAP, and that current regulations require the determination to be made by the Director. Concern was expressed that the proposed rule removes a layer of approval needed to terminate a LAP and leaves the decision solely in the hands of the Chief of NVLAP.

Response. There is no change to current regulations, which already state that the Chief of NVLAP may terminate a LAP when the Chief of NVLAP determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. The final rule that amended the NVLAP procedures by replacing the Director of NIST with the Chief of NVLAP in § 285.19(a) and (c), was published in the **Federal Register** (64 FR 59616) on November 3, 1999, and became effective on that date. The regulations were amended to conform with the delegation of authority at NIST. Subsequently, on November 18, 1999, a NVLAP Policy Guide (PG–3–1999) was published to notify all NVLAP-enrolled laboratories of the change in the regulations, reflecting the delegation of certain designated authorities.

Comment. The respondents stated that under the proposed regulation it appears that renewal responsibilities have been shifted entirely to the accredited laboratory. The respondents recommended that the proposed regulations be clarified to indicate who has the responsibility for initiating the renewal of a laboratory's accreditation.

Response. NVLAP will continue to notify accredited laboratories when it is time to renew their accreditations; there will be no change in the renewal process. The regulations were simplified and reorganized for the purposes presented in the Summary of this notice and, therefore, no longer describe in detail the steps of the accreditation process. Renewing laboratories will continue to be sent a renewal application package before the expiration date of their accreditations to allow sufficient time to complete the renewal process. (See Section 3.6.1 of NIST Handbook 150, 2001 Edition.)

Comments. Three respondents expressed concern about the addition of § 285.12, Monitoring visits, to the regulation, stating that the problem with unannounced monitoring visits by any accreditation body of an unlimited scope is the major disruption of the normal operations of the laboratory. These respondents requested that NVLAP reconsider the type of items that would be appropriate for unannounced monitoring visits and those that would be appropriate for announced monitoring visits and reduce them to a written list.

Reponse. NIST added § 285.12 to the revised rule to be consistent with NVLAP's actual practice and current procedures, which were previously set forth in the 1994 edition of NIST Handbook 150, Sec. 285.22(b)(6), Monitoring visits. This procedure has been added to the regulations to better notify the public of NVLAP's procedures.

Use of the term ''monitoring visit'' dates back to 1982, when NIST published a notice in the **Federal**

Register to update its announcement of the availability of laboratory accreditation programs for certain fields of testing (44 FR 9492, March 5, 1982). Under Supplementary Information, Unnannounced Visits, this notice stated:

* * * ''In addition to regularly scheduled laboratory visits, unannounced visits * * * may be initiated * * *'' (45 FR 5572–5598). Experience has shown that in order to insure the availability of management and staff to demonstrate equipment and perform tests, a call to the laboratory from one day to one week before the visit may be necessary. Therefore, in the future these unannounced visits will be known as ''monitoring visits'' which may or may not be announced in advance of the visit. Monitoring visits may occur at any time. These visits may be initiated based on random selection or in response to a specific need because, in the opinion of DOC, the laboratory appears to have a testing problem. In general, a complete review of the laboratory is not contemplated for the monitoring visit. In the case of randomly selected visits, key aspects of the laboratory will be checked. In the case of visits due to an apparent problem, aspects relating to the problem, and possibly other selected key aspects as well, will be checked.

Surveillance of laboratories is a requirement of ISO/IEC Guide 58:1993, clause 6.7. NVLAP anticipates that this requirement will be expanded to include ''short notice visits'' when ISO/IEC Guide 58 is replaced byISO/IEC 17011, *General requirements for bodies providing assessment and accreditation of conformity assessment bodies* (now in draft status). NVLAP will continue to minimize disruptions to laboratories during on-site visits.

Comments. The four respondents stated that the due process protections under § 285.13, Denial, suspension, revocation or termination of accreditation, have been changed substantially from the current regulations, including the elimination of consultation with the laboratory prior to suspension. The respondents also said that it appears there is no recourse for a laboratory if it feels that it has been treated unfairly by the NVLAP auditor.

Response. The phrase ''after consultation with the laboratory'' was removed because consultation is defined as a seeking of opinion or advice and is, therefore, an inappropriate choice of words for this requirement. There are many cases where consultation prior to suspension is inappropriate, such as the failure of an accredited laboratory to pass two rounds of proficiency testing within a set of three consecutive rounds in the Bulk Asbestos Fiber Analysis LAP. In this example, suspension is immediate and automatic because the laboratory failed to meet the program proficiency testing requirement. (See NIST Handbook 150–3 (1994): NVLAP Bulk Asbestos Analysis).

Under section 285.13(b)(1) of the revised rule, NVLAP will continue to clearly state its requirements, to notify a laboratory of the reasons for and conditions of the suspension, and to specify the action(s) the laboratory must take to have its accreditation reinstated. Except for the deletion of the term ''consultation,'' the procedures contained in § 285.13 of the revised rule remain the same as those contained in section 285.24(c) of the 1994 rule. Some minor changes were made to harmonize the wording of the proposed rule with NVLAP Policy Guide PG–2–1998, *Accreditation Documents for Laboratories Whose Accreditation Has Been Suspended, Revoked, or Otherwise Terminated,* issued to NVLAP-accredited laboratories on May 29, 1998.

If a laboratory feels that it has been treated unfairly by a NVLAP assessor, the laboratory may state its grievance in its response to the assessment report or in a letter of complaint to NVLAP. Complaints from laboratories are addressed in accordance with NVLAP's quality system procedure for complaints, disputes and appeals, which applies to complaints concerning the handling of accreditation matters from laboratories or from users of NVLAP accredited laboratories. Copies of this procedure may be obtained pursuant to § 285.15(a) of the revised regulation.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0693–0003.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The regulation is procedural and has no impact on any entity unless that entity chooses to participate, in which case, the cost to any participant is the same, small cost ($500/application, other associated costs cannot be projected because they are dependent upon the LAP in which an entity is participating, and in some cases LAPs have not yet been established) for any size participant; (2) access to NVLAP's accreditation system is not conditional upon the size of a laboratory or membership of any association or group, nor are there undue financial conditions to restrict participation; and (3) the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not significantly changed by this rule.

List of Subjects in 15 CFR Part 285

Accreditation, Business and industry, Calibration, Commerce, Conformity assessment, Laboratories, Measurement standards, Testing.

Dated: May 22, 2001.

Karen H. Brown,

Deputy Director.

For reasons set forth in the preamble, title 15 of the Code of Federal Regulations is amended as follows:

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

1. The authority citation for Part 285 continues to read as follows:

Authority: 15 U.S.C. 272 *et seq.*

2. Part 285 is revised to read as follows;

PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

Sec.

§ 285.1 Purpose.

The purpose of part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. Supplementary technical and administrative

requirements are provided in supporting handbooks and documents as needed, depending on the criteria established for specific Laboratory Accreditation Programs (LAPs)

§ 285.2 Confidentiality.

To the extent permitted by applicable laws, NVLAP will protect the confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

§ 285.3 Referencing NVLAP accreditation.

The term *NVLAP* (represented by the NVLAP logo) is a federally registered certification mark of the National Institute of Standards and Technology and the federal government, who retain exclusive rights to control the use thereof. Permission to use the term and/or logo is granted to NVLAP-accredited laboratories for the limited purposes of announcing their accredited status, and for use on reports that describe only testing and calibration within the scope of accreditation. NIST reserves the right to control the quality of the use of the term *NVLAP* and of the logo itself.

§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.

NVLAP establishes LAPs in response to legislative actions or to requests from private sector entities and government agencies. For legislatively mandated LAPs, NVLAP shall establish the LAP. For requests from private sector entities and government agencies, the Chief of NVLAP shall analyze each request, and after consultation with interested parties through public workshops and other means shall establish the requested LAP if the Chief of NVLAP determines there is need for the requested LAP.

§ 285.5 Termination of a LAP.

(a) The Chief of NVLAP may terminate a LAP when he/she determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Chief of NVLAP proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

(b) When a LAP is terminated, NVLAP will no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted shall remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by NVLAP. Technical expertise will be maintained by NVLAP while any accreditation remains effective.

§ 285.6 Application for accreditation.

A laboratory may apply for accreditation in any of the established LAPs. The applicant laboratory shall provide a completed application to NVLAP, pay all required fees and agree to certain conditions as set forth in the NVLAP Application for Accreditation, and provide a quality manual to NVLAP (or a designated NVLAP assessor) prior to the assessment process.

§ 285.7 Assessment.

(a) *Frequency and scheduling.* Before initial accreditation, during the first renewal year, and every two years thereafter, an on-site assessment of each laboratory is conducted to determine compliance with the NVLAP criteria.

(b) *Assessors.* NVLAP shall select qualified assessors to evaluate all information collected from an applicant laboratory pursuant to § 285.6 of this part and to conduct the assessment on its behalf at the laboratory and any other sites where activities to be covered by the accreditation are performed.

(c) *Conduct of assessment.* (1) Assessors use checklists provided by NVLAP so that each laboratory receives an assessment comparable to that received by others.

(2) During the assessment, the assessor meets with management and laboratory personnel, examines the quality system, reviews staff information, examines equipment and facilities, observes demonstrations of testing or calibrations, and examines tests or calibration reports.

(3) The assessor reviews laboratory records including resumes, job descriptions of key personnel, training, and competency evaluations for all staff members who routinely perform, or affect the quality of the testing or calibration for which accreditation is sought. The assessor need not be given information which violates individual privacy, such as salary, medical information, or performance reviews outside the scope of the accreditation program. The staff information may be kept in the laboratory's official personnel folders or separate folders that contain only the information that the NVLAP assessor needs to review.

(4) At the conclusion of the assessment, the assessor conducts an exit briefing to discuss observations and any deficiencies with the authorized representative who signed the NVLAP application and other responsible laboratory staff.

(d) *Assessment report.* At the exit briefing, the assessor submits a written report on the compliance of the laboratory with the accreditation requirements, together with the completed checklists, where appropriate.

(e) *Deficiency notification and resolution.* (1) Laboratories are informed of deficiencies during the on-site assessment, and deficiencies are documented in the assessment report (see paragraph (d) of this section).

(2) A laboratory shall, within thirty days of the date of the assessment report, provide documentation that the specified deficiencies have either been corrected and/or a plan of corrective actions as described in the NVLAP handbooks.

(3) If substantial deficiencies have been cited, NVLAP may require an additional on-site assessment, at additional cost to the laboratory, prior to granting accreditation. All deficiencies and resolutions will be subject to thorough review and evaluation prior to an accreditation decision.

(4) After the assessor submits their final report, NVLAP reviews the report and the laboratory's response to determine if the laboratory has met all of the on-site assessment requirements.

§ 285.8 Proficiency testing.

(a) NVLAP proficiency testing is consistent with the provisions contained in ISO/IEC Guide 43 (Parts 1 and 2), Proficiency testing by interlaboratory comparisons, where applicable, including revisions from time to time. Proficiency testing may be organized by NVLAP itself or a NVLAP-approved provider of services. Laboratories must participate in proficiency testing as specified for each LAP in the NVLAP program handbooks.

(b) *Analysis and reporting.* Proficiency testing data are analyzed by NVLAP and reports of the results are made known to the participants. Summary results are available upon request to other interested parties; e.g., professional societies and standards writing bodies. The identity and performance of individual laboratories are kept confidential.

(c) *Proficiency testing deficiencies.* (1) Unsatisfactory participation in any NVLAP proficiency testing program is a technical deficiency which must be resolved in order to obtain initial accreditation or maintain accreditation.

(2) Proficiency testing deficiencies are defined as, but not limited to, one or more of the following:

(i) Failure to meet specified proficiency testing performance requirements prescribed by NVLAP;

(ii) Failure to participate in a regularly scheduled ''round'' of proficiency

testing for which the laboratory has received instructions and/or materials;

(iii) Failure to submit laboratory control data as required; and

(iv) Failure to produce acceptable test or calibration results when using NIST Standard Reference Materials or special artifacts whose properties are well-characterized and known to NIST/NVLAP.

(3) NVLAP will notify the laboratory of proficiency testing deficiencies and actions to be taken to resolve the deficiencies. Denial or suspension of accreditation will result from failure to resolve deficiencies.

§ 285.9 Granting accreditation.

(a) The Chief of NVLAP is responsible for all NVLAP accreditation actions, including granting, denying, renewing, suspending, and revoking any NVLAP accreditation.

(b) Initial accreditation is granted when a laboratory has met all NVLAP requirements. One of four accreditation renewal dates (January 1, April 1, July 1, or October 1) is assigned to the laboratory and is usually retained as long as the laboratory remains in the program. Initial accreditation is granted for a period of one year; accreditation expires and is renewable on the assigned date.

(c) Renewal dates may be reassigned to provide benefits to the laboratory and/or NVLAP. If a renewal date is changed, the laboratory will be notified in writing of the change and any related adjustment in fees.

(d) When accreditation is granted, NVLAP shall provide to the laboratory a Certificate of Accreditation and a Scope of Accreditation,

§ 285.10 Renewal of accreditation.

(a) An accredited laboratory must submit both its application for renewal and fees to NVLAP prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(b) On-site assessments of currently accredited laboratories are performed in accordance with the procedures in § 285.7. If deficiencies are found during the assessment of an accredited laboratory, the laboratory must follow the procedures set forth in § 285.7(e)(2) or face possible suspension or revocation of accreditation.

§ 285.11 Changes to scope of accreditation.

A laboratory may request in writing changes to its Scope of Accreditation. If the laboratory requests additions to its Scope, it must meet all NVLAP criteria for the additional tests or calibrations, types of tests or calibrations, or standards. The need for an additional on-site assessment and/or proficiency testing will be determined on a case-by-case basis.

§ 285.12 Monitoring visits.

(a) In addition to regularly scheduled assessments, monitoring visits may be conducted by NVLAP at any time during the accreditation period. They may occur for cause or an a random selection basis. While most monitoring visits will be scheduled in advance with the laboratory, NVLAP may conduct unannounced monitoring visits.

(b) The scope of a monitoring visit may range from checking a few designated items to a complete review. The assessors may review deficiency resolutions, verify reported changes in the laboratory's personnel, facilities, or operations, or administer proficiency testing, when appropriate.

§ 285.13 Denial, suspension, revocation, or termination of accreditation.

(a) A laboratory may at any time voluntarily terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so.

(b) If NVLAP finds that an accredited laboratory does not meet all NVLAP requirements, has violated the terms of its accreditation, or does not continue to comply with the provisions of these procedures, NVLAP may suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation.

(1) If a laboratory's accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test or calibration reports, correspondence, or advertising during the suspension period in the area(s) affected by the suspension.

(2) NVLAP will not require a suspended laboratory to return its Certificate and Scope of Accreditation, but the laboratory must refrain from using the NVLAP logo in the area(s) affected until such time as the problem(s) leading to the suspension has been resolved. When accreditation is reinstated, NVLAP will authorize the laboratory to resume testing or calibration activities in the previously suspended area(s) as an accredited laboratory.

(c) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(1) The laboratory will have thirty days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within the thirty-day period.

(2) If accreditation is revoked, the laboratory may be given the option of voluntarily terminating the accreditation.

(3) A laboratory whose accreditation has been revoked must cease use of the NVLAP logo on any of its reports, correspondence, or advertising related to the area(s) affected by the revocation. If the revocation is total, NVLAP will instruct the laboratory to return its Certificate and Scope of Accreditation and to remove the NVLAP logo from all test or calibration reports, correspondence, or advertising. If the revocation affects only some, but not all of the items listed on a laboratory's Scope of Accreditation, NVLAP will issue a revised Scope that excludes the revoked area(s) in order that the laboratory might continue operations in accredited areas.

(d) A laboratory whose accreditation has been voluntarily terminated, denied or revoked, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the NVLAP conditions and criteria for accreditation.

§ 285.14 Criteria for accreditation.

The requirements for laboratories to be recognized by the National Voluntary Laboratory Accreditation Program as competent to carry out tests and/or calibrations are contained in clauses 4 and 5 of ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories,* including revisions from time to time.

§ 285.15 Obtaining documents.

(a) Application forms, NVLAP handbooks, and other NVLAP documents and information may be obtained by contacting the NVLAP, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, Maryland 20899–2140; phone: 301–975–4016; fax: 301–926–2884; e-mail: nvlap@nist.gov.

(b) Copies of all ISO/IEC documents are available from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York 10036; phone: 212–642–4900; fax: 212–398–0023; web site: www.ansi.org. You may inspect copies of all applicable ISO/IEC documents at the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 820 West Diamond Avenue, Room 297, Gaithersburg, MD.

[FR Doc. 01–13448 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release Nos. IC–24991 and IA–2945; File No. S7–06–01]

RIN 3235–AI05

Electronic Recordkeeping by Investment Companies and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 that permit registered investment companies and registered investment advisers to preserve required records using electronic storage media such as magnetic disks, tape, and other digital storage media. The amendments expand the ability of advisers and funds to use electronic storage media to maintain and preserve records. This release and these rule amendments respond to the enactment of the Electronic Signatures in Global and National Commerce Act, which encourages federal agencies to accommodate electronic recordkeeping.

EFFECTIVE DATE: May 31, 2001.

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Martha B. Peterson, Special Counsel, (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting amendments to rule 31a–2 (17 CFR 270.31a–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act''), and rule 204–2 (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (the ''Advisers Act'').[1]

Executive Summary

The Commission is adopting amendments to rules regarding electronic recordkeeping by registered investment companies (''funds'') and registered investment advisers (''advisers''). The federal securities laws require funds, advisers, and others to make and keep books and records. The recordkeeping requirements are a key part of the Commission's regulatory program for funds and advisers, as they allow us to monitor fund and adviser operations, and to evaluate their compliance with federal securities laws. Last year, Congress passed the Electronic Signatures in Global and National Commerce Act (the ''Electronic Signatures Act,'' ''Act,'' or ''ESIGN'') to facilitate the use of electronic records and signatures in interstate and foreign commerce.[2] Consistent with the purposes and goals of the Electronic Signatures Act, we are adopting rule amendments that expand the circumstances under which funds and advisers may keep records on electronic storage media, and clarify and update our recordkeeping rules. We are also interpreting rules 31a-2 and 204–2 to be the exclusive means by which funds and advisers can comply with the recordkeeping provisions of the Electronic Signatures Act.

I. Discussion

A. Amendments to Rules 31a–2 and 204–2

The Commission is amending rules 31a–2 and 204–2 to permit funds and advisers to keep all of their records in an electronic format. Prior to today's amendments, rules 31a–2 and 204–2 provided that funds and advisers could keep records on electronic storage media only if the records were originally created or received in an electronic format.[3] The Commission's staff had issued no-action letters to conditionally permit funds and advisers to convert records into an electronic format and retain them electronically.[4] In March of this year we proposed rule amendments to incorporate these no-action letters into rules 31a–2 and 204–2, while eliminating many of the conditions that apply only to electronic records created from non-electronic originals. We also proposed to clarify the obligation of funds and advisers to provide copies of their records to Commission examiners, and to incorporate terminology used in electronic recordkeeping rules under the Securities Exchange Act of 1934 into rules 31a–2 and 204–2.[5] We received seven comment letters addressing the proposal.[6] Commenters supported most of the proposed amendments, and we are adopting them substantially as proposed, with a few changes in response to concerns expressed by commenters.

Under revised rules 31a–2 and 204–2, funds and advisers are permitted to maintain records electronically if they establish and maintain procedures: (i) To safeguard the records from loss, alteration, or destruction, (ii) to limit access to the records to authorized personnel, the Commission, and (in the case of funds) fund directors, and (iii) to ensure that electronic copies of non-electronic originals are complete, true, and legible.[7] In response to a suggestion of one commenter, we are expanding rules 31a–2 and 204–2 to include *all* records that are required to be

[1] Unless otherwise noted, all references to rule 31a–2 or rule 204–2, or to any paragraph of those rules, will be to 17 CFR 270.31a–2 and 17 CFR 275.204–2, as amended by this release.

[2] Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106–229, 114 Stat. 464 (2000) (15 U.S.C. 7001), Preamble.

[3] *See* Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Company Act Release No. 24890 (Mar. 13, 2001) [66 FR 15369 (Mar. 19, 2001)] (''Proposing Release'') at n.4 and accompanying text.

[4] *See* Oppenheimer Management Corporation, SEC No-Action Letter (Aug. 28, 1995); DST Systems, Inc., SEC No-Action Letter (Feb. 2, 1993).

[5] Proposing Release, *supra* note 3, at nn. 7–12 and accompanying text.

[6] The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC (File No. S7–06–01).

[7] Rules 31a–2(f)(3) and 204–2(g)(3). We requested commenters to address whether rules 31a–2 and 204–2 should require funds and advisers to preserve records in a non-rewriteable, non-erasable (also known as ''write once, read many,'' or ''WORM'') format. Commenters concurred in our preliminary assessment, at the proposing stage, that the costs of such a requirement would be likely to outweigh the benefits (with respect to advisers and funds). Based on our consideration of costs, benefits, and other factors described in the proposing release we are not adopting such a requirement at this time. We recognize that the standards for electronic recordkeeping we are adopting for funds and advisers are different from the rules that we have adopted for broker-dealers, which require brokerage records to be preserved in a WORM format. We have not experienced any significant problems with funds or advisers altering stored records. Moreover, most advisory and mutual fund arrangements involve multiple parties (*e.g.,* brokers, custodians, transfer agents), each with its own, often parallel, recordkeeping requirement. As a result, our compliance examiners typically have an alternative means to verify the accuracy of adviser and fund records. In light of these factors, the costs of requiring funds and advisers to invest in new electronic recordkeeping technologies may not be justified.

maintained and preserved by any rule under the Investment Company or Advisers Acts (''other recordkeeping requirements'') so that it is clear that if funds and advisers keep records electronically they must comply with the conditions of these rules.[8]

We are also amending the rules to clarify the obligation of funds and advisers to provide copies of their records to Commission examiners. The amendments make clear that funds and advisers may be requested to promptly provide (i) legible, true, and complete copies of records in the medium and format in which they are stored, and printouts of such records; and (ii) means to access, view, and print the records.[9]

We are not adopting a proposed amendment that would have stated that records are to be provided in no case more than one business day after a request.[10] Some commenters were concerned that such an amendment could preclude funds and advisers from reaching an accommodation with the examination staff to produce certain documents immediately and other documents, that are not immediately accessible, on a delayed basis.[11] We agree that such arrangements when entered into and performed in good faith by funds or advisers can facilitate the examination process. While the ''promptly'' standard imposes no specific time limit, we expect that a fund or adviser would be permitted to delay furnishing electronically stored records for more than 24 hours only in unusual circumstances. At the same time, we believe that in many cases funds and advisers could, and therefore will be required to, furnish records immediately or within a few hours of request.[12]

B. Electronic Signatures Act

Under the Electronic Signatures Act, an agency's recordkeeping requirements may be met by retaining electronic records that accurately reflect the information set forth in the record, and remain accessible to all persons who are entitled to access, in a format that can be accurately reproduced.[13] The Act allows us to interpret this provision pursuant to our authority under the Investment Company and Advisers Acts.[14] Our interpretation of the Electronic Signatures Act must be consistent with the Act and not add to its requirements.[15] The interpretation must be based on findings that (i) our interpreting regulations are substantially justified; (ii) the methods selected to carry out our purposes are substantially equivalent to the requirements imposed on records that are not electronic records and will not impose unreasonable costs on the acceptance and use of electronic records; and (iii) the methods selected to carry out our purposes do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.[16] The Electronic Signatures Act also explicitly authorizes agencies to interpret the Act's electronic recordkeeping provisions to specify performance standards to assure accuracy, record integrity, and accessibility of electronically retained records.[17]

We interpret the Electronic Signatures Act with respect to the Investment Company Act and Advisers Act to require funds and advisers to comply with the requirements of rules 31a–2 and 204–2 when they keep required records on electronic storage media. Funds and advisers, therefore, can comply with the requirements of the Electronic Signatures Act only by complying with the requirements of amended rules 31a–2 and 204–2. This interpretation includes any records, maintained in an electronic format, that are required by any rule under the Investment Company or Advisers Acts.[18] In the proposing release, we asked for comment on whether these interpretations were consistent with the Electronic Signatures Act's requirements.[19] Commenters generally agreed that our interpretation of the Electronic Signatures Act was reasonable. As discussed below, our rules and interpretation satisfy all requirements of the Electronic Signatures Act.

1. Consistency With Electronic Signatures Act

Rules 31a–2 and 204–2 and the other recordkeeping requirements are consistent with the Electronic Signatures Act. The Act permits federally required records to be retained in an electronic format, and we are amending rules 31a–2 and 204–2 to permit funds and advisers to maintain all required records electronically.

[8] Prior to the adoption of these amendments, rule 31a–2(f)(1) was limited to records required to be maintained and preserved under rules 31a–1(a) through (d) and 31a–2 (a) through (c), and rule 204–2(g)(1) was limited to records required to be maintained under rule 204–2. Other rules under both Acts contain additional recordkeeping requirements. *See, e.g.,* rule 2a–7(c)(10) [17 CFR 270.2a–7(c)(10)] (money market funds must keep a written copy of certain procedures for not less than six years); rule 8b–16(c) (17 CFR 270.8b–16(c)) (funds must maintain certain documents concerning dividend reinvestment plans in accordance with section 31 of the Investment Company Act); rule 10f–3(b)(12)(ii) (17 CFR 270.10f–3(b)(12)(ii)) (funds must maintain and preserve for not less than six years a written record of certain security transactions during the existence of an underwriting or selling syndicate); rule 11a–3(a)(2)(i) (17 CFR 270.11a–3(a)(2)(i)) (funds must maintain and preserve records of any determination of the costs incurred in connection with exchange offers for not less than six years in accordance with section 31(b) of the Investment Company Act); rule 12b–1(f) (17 CFR 270.12b–1(f)) (funds must preserve copies of any plan, agreement or report under this rule for not less than six years); rule 17e–1(d)(2) (17 CFR 270.17e–1(d)(2)) (funds must maintain and preserve for at least six years a written record of certain brokerage transactions); rule 17j–1(f)(1) (17 CFR 270.17j–1(f)(1)) (each fund that is required to adopt a code of ethics must make the corresponding records available to the Commission or its representatives for inspection); rule 203A–2(e)(4) (17 CFR 275.203A–2(e)(4)) (advisers must maintain a record of the States in which the adviser has determined it would be required to register for not less than five years); and rule 204–1(c) (17 CFR 275.204–1(c)) (advisers must maintain copies of Part II of Form ADV and any brochure delivered to client).

[9] Rules 31a–2(f)(2) and 204–2(g)(2). We have eliminated a proposed requirement that funds and advisers provide means to search and sort, as well as access, view, and print records. When their recordkeeping systems have the capacity to automatically ''search'' and ''sort'' records, funds and advisers typically voluntarily make those functions available to our examination staff. We did not intend to require funds and advisers to add ''search'' and ''sort'' functions to systems that do not have that capability.

[10] *See* proposed rules 31a–2(f)(2)(ii) and 204–2(g)(2)(ii).

[11] Rule 31a–2(a) generally requires records to be preserved in an ''easily accessible'' place for only the first two years of the retention period.

[12] *See* Investment Company Act; Use of Magnetic Tape, Disk, or Other Computer Storage Medium, Investment Company Act Release No. 15410 (Nov. 13, 1986) [51 FR 42207 (Nov. 24, 1986)].

[13] ESIGN section 101(d)(1).

[14] Under the Electronic Signatures Act, a federal regulatory agency (like the Commission) that is responsible for rulemaking under any other statute (such as the Investment Company Act or the Advisers Act) ''may interpret section 101 [of the Electronic Signatures Act] with respect to such statute through the issuance of regulations pursuant to a statute; or to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the **Federal Register** in the case of an order or guidance issued by a Federal regulatory agency).'' ESIGN section 104(b).

[15] ESIGN section 104(b)(2)(A) and (B).

[16] ESIGN section 104(b)(2)(C).

[17] ESIGN section 104(b)(3). Such performance standards may be specified in a manner that imposes a requirement in violation of the general prohibition against selecting methods that require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures if the requirement (i) serves an important governmental objective and (ii) is substantially related to the achievement of that objective.

[18] *See supra* note 8 and accompanying text.

[19] Proposing Release, *supra* note 3, at nn.13–15 and accompanying text.

2. No Additional Requirements

Rules 31a–2 and 204–2 and the other recordkeeping requirements do not impose requirements in addition to those imposed by the Act. The Electronic Signatures Act requires electronic records to be stored in a manner that ensures that they are accurate, accessible, and capable of being accurately reproduced for later reference.[20] The rules require funds and advisers that maintain their records electronically to comply with certain conditions that are consistent with the requirements of the Act and that are designed to bring about fund and adviser compliance with the Act's requirements.[21]

3. Substantial Justification

Our rules require funds and advisers to maintain a wide variety of documents that we use to verify compliance with federal securities law.[22] The value of these records is entirely dependent on their integrity and accessibility. If funds and advisers are not required to protect their records from inadvertent or intentional alteration or destruction[23] and provide examiners with meaningful access to all required records,[24] then the records become unreliable, and the examination process moot. Therefore, we find that our interpretation of the Electronic Signatures Act, that funds and advisers must comply with rules 31a–2 and 204–2, is substantially justified.

4. Requirements Equivalent to Requirements for Other Record Formats

Rules 31a–2 and 204–2 and the other recordkeeping requirements subject electronic records to conditions that are substantially equivalent to conditions under which funds and advisers keep paper and micrographic records. These conditions are designed to ensure that the records exist in a form that is legible, authentic, complete, and accessible. While all records, regardless of format, must comply with certain conditions,[25] other requirements, which would be superfluous for paper records, apply only to electronic and micrographic records.[26]

Funds and advisers that maintain records in an electronic format must comply with several requirements that have no micrographic or paper equivalent. For example, funds and advisers must have procedures to reasonably protect electronic records from loss, alteration, or destruction,[27] to limit access to electronic records,[28] and to assure that electronic records that are created from hard copy are complete, true, and legible.[29] We believe that these additional requirements are necessary because of the unique vulnerability of *unprotected* electronic records to undetectable alteration and falsification.

5. No Unreasonable Costs on Acceptance and Use of Electronic Records

We have permitted funds and advisers to retain records electronically for over fifteen years.[30] During this period electronic recordkeeping by funds and advisers has become widespread.[31] We conclude that rules 31a–2 and 204–2 and the other recordkeeping requirements have not and will not impose unreasonable costs on the acceptance and use of electronic recordkeeping.

6. Specific Technology or Technical Specification

The Electronic Signatures Act generally prohibits us from requiring or according greater legal status or effect to the implementation or application of a specific technology or technical specification. However, the Act does permit us to specify performance standards to assure the accuracy, integrity, and accessibility of required records, even if our standards require funds and advisers to implement or apply a specific technology or technical specification to their storage system.[32] Rules 31a–2 and 204–2 have been deliberately crafted to be technologically neutral, leaving funds and advisers free to adopt any combination of technological and manual protocols that meet the requirements of the rules. In any event, even if the rules were interpreted to favor a specific technology or technical specification, they would nonetheless be a valid exercise of our interpretive authority, as they serve the important governmental objective of assisting us to oversee fund and adviser compliance with the federal securities laws, and are substantially related to the achievement of that objective.[33] The continuing accessibility and integrity of fund and adviser records are critical to the fulfillment of our oversight responsibilities.

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[20] ESIGN section 101(d)(1).

[21] The rules' general requirements that funds and advisers have procedures to protect electronic records from alteration, loss, or destruction, to limit unauthorized access, and verify the integrity of electronic copies of hard copy originals ensure that an electronic record is accurate from the outset, and limit the possibility that an electronic record will be corrupted during its retention period. The rules' requirements regarding indexing, and the obligation of funds and advisers to provide records to examiners and fund directors foster the accessibility of electronic records.

[22] For example, funds must keep accounts, books and other documents that form the basis for the fund's financial statements, and itemized records detailing purchases and sales of securities, receipts and deliveries of securities, receipts and disbursements of cash, and all other debits and credits. *See* rule 31a–1. Advisers must maintain records such as ledgers reflecting asset, liability, reserve, capital, income, and expense accounts, memoranda of instructions from clients, and written communications received and sent relating to recommendations and advice, and receipt, disbursement or delivery of funds or securities. *See* rule 204–2.

[23] *See* rules 31a–2(f)(3)(iii) and 204–2(g)(3)(iii) (requiring procedures to ensure the quality of electronic copies of non-electronic records); rules 31a–2(f)(2)(iii) and 204–2(g)(2)(iii) (requiring that funds and advisers separately store duplicates of electronic records); rules 31a–2(f)(3)(ii) and 204–2(g)(3)(ii) (requiring funds and advisers to limit access to electronic records); rules 31a–2(f)(3)(i) and 204–2(g)(3)(i) (requiring funds and advisers to adopt procedures to maintain and preserve electronic records, so as to reasonably safeguard them from loss, alteration, or destruction).

[24] *See* rules 31a–2(f)(2)(ii)(A) and 204–2(g)(2)(ii)(A) (requiring funds and advisers to provide promptly a legible, true, and complete copy of an electronically stored record upon request from the Commission or other parties entitled to access the records); rules 31a–2(f)(2)(i) and 204–2(g)(2)(i) (requiring funds and advisers to arrange and index their electronic and micrographic records in a way that permits easy location and retrieval); and rules 31a–2(f)(2)(ii)(C) and 204–2(g)(2)(ii)(C) (requiring funds and advisers to provide means to access, view, and print electronic records).

[25] *See, e.g.,* rule 31a–2(a)(1) (funds to preserve required records permanently, the first two years in an easily accessible place); and rule 204–2(a) (all registered advisers must keep their required records true, accurate, and current).

[26] For example, the requirement that funds and advisers that keep micrographic or electronic records provide promptly (i) a legible, true, and complete copy of the record in the medium and format in which it is stored, (ii) a legible, true, and complete printout of the record, and (iii) means to access, view, and print the records is unnecessary for paper records, which require no special treatment to make them readable and reproducible.

[27] Rules 31a–2(f)(3)(i) and 204–2(g)(3)(i).

[28] Rules 31a–2(f)(3)(ii) and 204–2(g)(3)(ii).

[29] Rules 31a–2(f)(3)(iii) and 204–2(g)(3)(iii).

[30] The Commission amended rules 204–2 and 31a–2, in 1985 and 1986 respectively, to permit advisers and funds to store required records in computer systems. *See* Amendment to Investment Advisers Act Recordkeeping Rule, Investment Advisers Act Release No. 952 (Jan. 11, 1985) [50 FR 2542 (Jan. 17, 1985)]; Investment Company Act; Use of Magnetic Tape, Disk, or Other Computer Storage Medium, Investment Company Act Release No. 15410 (Nov. 13, 1986) [51 FR 42207 (Nov. 24, 1986)].

[31] With today's amendments to rules 31a–2 and 204–2, the conditions under which funds and advisers may convert and store hard copy records as electronic records will be more flexible than the conditions of the staff no-action letters. The conditions under which other records may be stored electronically are unchanged. As a result, we are confident that rules 31a–2 and 204–2, as amended, will impose no greater burden on electronic recordkeeping than has been imposed to date.

[32] ESIGN section 104(b)(3)(A).

[33] ESIGN section 104(b)(3)(A).

C. Effective Date

The effective date for these amendments is May 31, 2001. In most cases, the Administrative Procedures Act (''APA'') requires that a rule amendment be published in the **Federal Register** at least 30 days prior to its effective date unless the promulgating agency can show good cause for shortening this interim period.[34] The Electronic Signatures Act becomes effective on June 1, 2001, at which point funds and advisers may opt to store required records electronically, so long as the records are accessible and accurate.[35] As described above, the Electronic Signatures Act authorizes the Commission to interpret these terms. A gap between the effective dates of the Electronic Signatures Act and our rule amendments would needlessly create confusion about the appropriate standards for electronic recordkeeping. During the period between the effective dates, funds and advisers would be forced to choose between maintaining their electronic records in accordance with the Act's general but operative standards, or relying instead on the more specific, but as yet not effective, standards set in rules 31a–2 and 204–2. We find that there is good cause for these amendments to become effective on May 31, 2001.

The APA also authorizes acceleration of the effective date of a rule that ''relieves a restriction.'' [36] The amendments to rules 31a–2 and 204–2 allow funds and advisers to store all of their required records electronically, regardless of how the documents originated or were received, thus removing the prior restrictions placed on storage of documents created or received on paper.

II. Cost-Benefit Analysis

In proposing the amendments to rules 31a–2 and 204–2, we considered the costs and benefits that the amendments would generate. Although we encouraged commenters to address the proposal's costs and benefits and to submit their own estimates of what they might be, we received no comment specifically addressing this issue.

We believe the amendments will impose few, if any, costs on funds or advisers that are not already required. As described above, the amended rules allow funds and advisers to maintain required records on electronic storage media, regardless of whether the record was created or received electronically. Our rules already permit funds and advisers to retain records electronically if they were created or received electronically, and these amendments do not materially change those requirements. The only effect will be on funds and advisers who choose to convert records into an electronic format, and they must simply do so in the same fashion as they already keep electronically created or received records. Electronic storage remains optional with the adoption of these amendments. We assume that funds and advisers will not select the electronic storage option provided for in the amended rules unless doing so is less expensive (or otherwise more efficient and, therefore, supported by business considerations). It remains our belief that the amended rules will allow funds and advisers greater flexibility to make business decisions about recordkeeping and, when appropriate, opt for electronic storage with potential cost savings and other benefits.

In addition, we are adopting minor amendments to clarify the obligation of funds and advisers to provide records to our examination staff and, in the case of funds, fund directors, and minor technical amendments to conform the language of rules 31a–2 and 204–2 to the recordkeeping rules under the Securities Exchange Act of 1934. We anticipate few, if any, costs to funds or advisers as a result of these amendments.

III. Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We requested comment on this issue in the Proposing Release, and we have considered these factors in determining to adopt the amendments as proposed. We did not receive any comments directly addressing this issue.

The amendments to rules 31a–2 and 204–2 promote efficiency by giving funds and advisers that establish procedures to assure record soundness the option of maintaining their electronic records in the format most suited to their business needs. The rules' standards are flexible, and permit funds and advisers to modify their electronic record retention practices to take advantage of advances in electronic storage technology.

We do not believe that the rule amendments will have an impact on competition. The rule amendments apply to all advisers and funds equally and should provide no competitive advantage or burden to any industry sector. The rule amendments should also have no impact on competition within the computer industry. The amendments do not favor the use of any particular form of electronic recordkeeping. They simply require that whatever technology a fund or adviser chooses, the fund or adviser have specific types of procedures to protect the integrity and accessibility of the electronic records.

We believe that the amendments are unrelated to and will have little or no effect on capital formation.

IV. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Acting Chairman of the Commission has certified that the proposed amendments to rules 31a–2 and 204–2 will not have a significant economic impact on a substantial number of small entities. While the amendments could potentially affect all funds and advisers, including small entities, the economic impact of the amendments will be insignificant. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding amendments to rule 31a–2 under the Investment Company Act and rule 204–2 under the Advisers Act. The Proposing Release summarized the IRFA and requested commenters to address matters discussed in the IRFA. We received no comment on the IRFA. The Acting Chairman's certification is attached to this release as Appendix A.

V. Paperwork Reduction Act

The amendments do not require a new collection of information. They affect only the manner in which registrants can store information that must be collected under rules 31a–2 and 204–2. In connection with rules 31a–2 and 204–2, the Commission previously submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act, a request for approval and received OMB control numbers for the rules, OMB Control Nos. 3235–0179 (rule 31a–2), and 3235–0278 (rule 204–2).

VI. Statutory Authority

The Commission is adopting amendments to rule 31a–2 under the Investment Company Act pursuant to authority set forth in sections 31 and 38(a) of the Investment Company Act (15 U.S.C. 80a–30 and 80a–37(a)).

[34] 5 U.S.C. 553(d)(3).

[35] ESIGN section 101(d)(1).

[36] 5 U.S.C. 553(d)(1).

The Commission is adopting amendments to rule 204–2 under the Advisers Act pursuant to authority set forth in sections 204, 206(4), and 211 of the Advisers Act (15 U.S.C. 80b–4, 80b–6(4), and 80b–11).

List of Subjects

17 CFR Part 270

Investment companies; Reporting and recordkeeping requirements; Securities.

17 CFR Part 275

Reporting and recordkeeping requirements; Securities.

Text of Rule Amendments

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The Authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.31a–2 is amended by:

a. Revising paragraphs (f)(1) and (f)(2);

b. Redesignating paragraph (f)(3) as (f)(4); and

c. Adding a new paragraph (f)(3) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(f) *Micrographic and electronic storage permitted.*—(1) *General.* The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment company, or person that maintains and preserves records on its behalf, must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

4. The authority citation following § 275.204–2 is removed.

5. Section 275.204–2 is amended by revising paragraphs (g)(1) and (g)(2), and by adding paragraph (g)(3), to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(g) *Micrographic and electronic storage permitted.*—(1) *General.* The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time by an investment adviser on:

(i) Micrographic media, including microfilm, microfiche, or any similar medium; or

(ii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) *General requirements.* The investment adviser must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

* * * * *

Dated: May 24, 2001.

By the Commission.

Margaret H. McFarland,

Secretary.

[**Note:** Appendix A to the Preamble will not appear in the Code of Federal Regulations.]

Appendix A; Regulatory Flexibility Act Certification

I, Laura S. Unger, Acting Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that amendments to rule 31a–2 (17 CFR 270.31a–2) under the Investment Company Act of 1940 (the ''Investment Company Act'') and rule 204–2 (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (the ''Advisers Act''), as amended, would not have a significant economic impact on a substantial number of small entities in the United States.

The Commission estimates that there are approximately 3,610 active registered investment companies, 3,010 of which are open-end investment companies with the remaining 600 closed-end investment companies. Of the total number of active registered investment companies, 203 are small entities. There are also 762 Unit

Investment Trusts (''UITs''), about 12 of which are small entities, as the term is defined by the Investment Company Act.[37] The Commission further estimates that approximately 1,500 out of 8,100 SEC-registered investment advisers are small entities, as the term is defined by the Advisers Act.[38]

All investment companies registered with the Commission (including both management investment companies and UITs) are subject to the recordkeeping requirements of rule 31a–2, and all registered advisers are subject to the recordkeeping requirements of rule 204–2. Electronic storage remains optional with the adoption of these amendments. Therefore, the amended rules will impact only those small funds and small advisers that choose to store required records electronically.

Despite the universal applicability of the rule changes on all funds and advisers that store their records on electronic storage media, the resulting economic impact of the amendments on small entities will not be significant. As funds and advisers are not required to store required records electronically, we anticipate that only those entities, small or otherwise, that foresee a financial or organizational benefit attaching to electronic storage, will exercise the expanded storage options found in the amendments to rules 31a–2 and 204–2. Accordingly, the amendments will not have a significant economic impact on a substantial number of small entities.

Dated: May 22, 2001.

Laura S. Unger,
Acting Chairman.

[FR Doc. 01–13526 Filed 5–29–01; 8:45 am]
BILLING CODE 8010–01–U

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations of Specially Designated Narcotics Traffickers and Removal of Specially Designated National of Cuba

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of twenty-seven individuals and three entities who have been designated as specially designated narcotics traffickers. The entry for one individual previously designated as a specially designated national of Cuba is removed from appendix A.

EFFECTIVE DATE: May 23, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control (''OFAC''). Pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers'' (the ''Order'') and Section 536.312 of the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536 (the ''Regulations''), the following 27 individuals and 3 entities are added to appendix A as persons who have been determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in or provide financial support or technological support for, or goods or services in support of other specially designated narcotics traffickers, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively ''Specially Designated Narcotics Traffickers'' or ''SDNTs''). All real and personal property in which the SDNTs have any interest, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of SDNTs are prohibited unless licensed by the Office of Foreign Assets Control or exempted by statute.

The Office of Foreign Assets Control also is removing from appendix A the entry for one individual because it has been determined that the individual no longer meets the criteria for designation as a Specially Designated National of Cuba under the Cuban Assets Control Regulations, 31 CFR part 515. All real and personal property of this individual, including all accounts in which the individual has any interest, which had been blocked solely due to the individual's designation as a Specially Designated National of Cuba, are unblocked; and all lawful transactions involving U.S. persons and this individual are permissible.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 50 U.S.C. 1601–1651; 50 U.S.C. 1701–1706; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, appendix A to 31 CFR chapter V is amended as set forth below:

Appendix A [Amended]

1. Appendix A to 31 CFR chapter V is amended by adding the following names inserted in alphabetical order, to read as follows:

ARMERO RIASCOS, Jose Eliecer, Carrera 5 No. 8–00, Buenaventura, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura,

[37] 17 CFR 270.0–10.

[38] 17 CFR 275.0–7.

Colombia; Cedula No. 16471549 (Colombia) (individual) [SDNT]
BUENDIA CUELLAR, Luis Alfonso, c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 6044411 (Colombia) (individual) [SDNT]
CAICEDO VERGARA, Nohemy,(a.k.a. CAICEDO VERGARA, Nohemi), Km. 4 El Pinal, Buenaventura, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 31375185 (Colombia) (individual) [SDNT]
DELGADO GUTIERREZ, Luis Alvaro, c/o TAURA S.A., Cali, Colombia; Cedula No. 16718474 (Colombia) (individual) [SDNT]
DUQUE BOTERO, Jorge Alirio, Calle 5 No. 5A–49, Buenaventura, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 616084 (Colombia) (individual) [SDNT]
ECHEVERRY HERRERA, Hernando,(a.k.a. ECHEVERRI HERRERA, Hernando), c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 1625525 (Colombia) (individual) [SDNT]
FOMEQUE BLANCO, Amparo, Mz. 21 Casa 5 Barrio San Fernando, Pereira, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 31206092 (Colombia) (individual) [SDNT]
FOMEQUE CAMPO, Deicy,(a.k.a. FOMEQUE CAMPO, Daysy), Avenida 4N No. 10N–100, Cali, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 38650034 (Colombia) (individual) [SDNT]
GALAPAGOS S.A., Calle 24N No. 6AN–15, Cali, Colombia; Carrera 115 No. 16B–121, Cali, Colombia; NIT # 800183712–2 (Colombia) [SDNT]
GARAVITO, Doris Amelia, c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 31233463 (Colombia) (individual) [SDNT]
GARCIA PIZARRO, Gentil Velez, c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 6616986 (Colombia) (individual) [SDNT]
GARCIA VARELA, Luis Fernando, c/o TAURA S.A., Cali, Colombia; Cedula No. 16282923 (Colombia) (individual) [SDNT]
GILMAN FRANCO, Maria, c/o TAURA S.A., Cali, Colombia; Cedula No. 22103099 (Colombia) (individual) [SDNT]
GONGORA ALARCON, Hernando, c/o TAURA S.A., Cali, Colombia; Cedula No. 19298944 (Colombia) (individual) [SDNT]
GUZMAN VELASQUEZ, Luz Marcela, c/o TAURA S.A., Cali, Colombia; Cedula No. 43568327 (Colombia) (individual) [SDNT]
HERNANDEZ, Oscar, Mz. 21 Casa 5 Barrio San Fernando, Pereira, Colombia; c/o TAURA S.A., Cali, Colombia; Cedula No. 6157940 (Colombia) (individual) [SDNT]
HERRAN SAAVEDRA, Victor Hugo, c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 16447166 (Colombia) (individual) [SDNT]
INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., (a.k.a. INPESCA S.A.), Km. 5 El Pinal, Buenaventura, Colombia; Av. Simon Bolivar Km. 5 El Pinal, Buenaventura, Colombia; NIT # 890302172–4 (Colombia) [SDNT]
MORALES CASTRILLON, Victor Hugo, c/o TAURA S.A., Cali, Colombia; Cedula No. 16620349 (Colombia) (individual) [SDNT]
MORENO DAZA, Ricardo Alfredo, Carrera 38D No. 4B–57, Cali, Colombia; c/o GALAPAGOS S.A., Cali, Colombia; c/o TAURA S.A., Cali, Colombia; Cedula No. 16631400 (Colombia) (individual) [SDNT]
PATIÑO FOMEQUE, Sonia Daysi,(a.k.a. PATIO FOMEQUE, Sonia Daicy), Calle 9 Oeste No. 25–106, Cali, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 66920533 (Colombia) (individual) [SDNT]
PATIÑO FOMEQUE, Victor Julio, (a.k.a. PATINO FOMEQUE, Victor Hugo), Avenida 4N No. 10N–100, Cali, Colombia; 6 c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; c/o TAURA S.A., Cali, Colombia; c/o GALAPAGOS S.A., Cali, Colombia; DOB 31 Jan 1959; Cedula No. 16473543 (Colombia)(individual) [SDNT]
PATIÑO NARANJO, Joaquin Gustavo, Avenida 4N No. 10N–100, Cali, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 2730245 (Colombia) (individual) [SDNT]
PINZON CEDIEL, John Jairo, c/o TAURA S.A., Cali, Colombia; Cedula No. 13542103 (Colombia) (individual) [SDNT]
RAMIREZ ESCUDERO, Pedro Emilio, Calle 6A No. 48–36, Cali, Colombia; c/o GALAPAGOS S.A., Cali, Colombia; Cedula No. 16280602 (Colombia) (individual) [SDNT]
ROMAN DOMINGUEZ, Erika, c/o TAURA S.A., Cali, Colombia; Cedula No. 66955540 (Colombia) (individual) [SDNT]
SARMIENTO MARTINEZ, Diana, c/o TAURA S.A., Cali, Colombia; Cedula No. 65698369 (Colombia) (individual) [SDNT]
TAURA S.A., Calle 13 No. 68–06, Of. 204, Cali, Colombia; Calle 13 No. 68–26, Of. 214, 313 & 314, Cali, Colombia; Carrera 115 No. 16B–121, Cali, Colombia; NIT # 800183713–1 (Colombia) [SDNT]
VILLADA ZUNIGA, Elmer, Calle 15 No. 20–10, Cali, Colombia; c/o TAURA S.A., Cali, Colombia; Cedula No. 14988902 (Colombia) (individual) [SDNT]
ZAMORA RUIZ, Alexander, c/o INPESCA S.A., Buenaventura, Colombia; Cedula No. 16498805 (Colombia) (individual) [SDNT]

2. Appendix A to 31 CFR chapter V is amended by removing the following entry:

WITTGREEN, Carlos (a.k.a. Carlos WITTGREEN Antinori; a.k.a. Carlos WITTGREEN A.; a.k.a. Carlos Antonio WITTGREEN), Panama (individual) [CUBA]

Dated: April 24, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: April 27, 2001.

James Sloan,

Acting Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 01–13451 Filed 5–23–01; 4:32 pm]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–098–0025; FRL–6989–1]

Determination of Attainment of the 1-Hour Ozone Standard for the Phoenix Metropolitan Area, Arizona and Determination Regarding Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Phoenix metropolitan serious ozone nonattainment area has attained the 1-hour ozone air quality standard by the deadline required by the Clean Air Act (CAA), November 15, 1999. Based on this determination, we also are determining that the CAA's requirements for reasonable further progress and attainment demonstrations and for contingency measures for the 1-hour ozone standard are not applicable to the area for so long as the Phoenix metropolitan area continues to attain the 1-hour ozone standard.

EFFECTIVE DATE: June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Doris Lo, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1287, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Under CAA section 181(b)(2)(A), we must determine within six months of an area's applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. On May 19, 2000 (65 FR 31859), we proposed to find that the Phoenix metropolitan serious ozone nonattainment area had attained the 1-hour ozone standard by its Clean Air Act (CAA) mandated attainment date of November 15, 1999. This proposal was based on all available, quality-assured air quality data collected from the monitoring network, which we determined met our regulations for state air quality monitoring networks.

II. Attainment Finding

A. Response to Comments on the Proposed Finding of Attainment

We received comments on our proposed attainment finding only from the Arizona Center for Law in the Public Interest (ACLPI). These comments concerned the adequacy of the Phoenix area ozone monitoring network. We respond to the most important of these comments below. Our complete responses to all comments can be found in the technical support document (TSD) for this action.

Comment: ACLPI claims that EPA's proposed rulemaking contains no evidence that Maricopa County Environmental Services Department (MCESD) has made changes to its ozone network in response to the inadequacies documented by EPA in the past. It also asserts that the County and the State have apparently discontinued the use of certain monitoring sites and states it found particularly troubling the discontinuance of the Papago Park monitor, which recorded the highest ozone violation in 1995.

Response: We agree that the Maricopa County ozone monitoring network was deficient when evaluated by EPA in 1989 and 1992. However, rather than reviewing all of the past inadequacies and determining whether the County addressed each one, we decided that a more reasonable approach was to evaluate the ozone monitoring network operated by MCESD as it existed during the attainment period 1997–1999. We have worked successfully with the MCESD over the past 9 years to improve its ambient monitoring program. We have determined that the ozone monitoring network as designed and operated during the attainment period, and at present, meets all applicable federal regulations. By concluding that the network meets our monitoring regulations, we effectively concluded that MCESD has corrected all past inadequacies.

The issue of whether or not the County and/or State has discontinued the operation of certain sites is not as important as whether the remaining network is designed and operated in a manner that allows the determination that the data collected are representative of ozone air quality in the Phoenix area. We have concluded that the network is sufficient to serve that purpose.

The Papago Park ozone monitor is still operating but has been renamed ''Emergency Management.'' Papago Park was the name given to the site by the Arizona Department of Environmental Quality (ADEQ) which initially operated the site. When the County took over the site, it was renamed Emergency Management. The site has been in continuous operation since it was established in 1990.

Comment: ACLPI asserts that EPA acknowledged that the ozone network in Phoenix still fails to meet all of the design requirements of 40 CFR part 58 in that the network does not meet the third monitoring objective, ''determining the impact on ambient pollution levels of significant sources or source categories,'' which can be met by monitoring emissions from significant sources of nitrogen oxides (NO_X) and volatile organic compounds (VOC).

Response: We stand by our position that in designing an ozone monitoring network—that is, a monitoring network that measures the concentration of the chemical compound ''ozone'' (O_3)—an agency cannot meet the third monitoring objective of assessing the impact of major sources or source categories since ozone is not emitted by any type of source. Ozone is formed in an atmospheric, photochemical reaction between NO_X and VOC. Precursor emissions from a source are transported well downwind before they react to form ozone. In an urban setting, emissions from large point sources mix with emissions from area and mobile sources as they are transported downwind and form ozone. In this setting, it is impossible to monitor specifically for ozone formed from a single source's precursor emissions.

For areas designated as transitional, marginal, and/or moderate ozone nonattainment areas, there is no requirement to monitor for the chemical precursors of ozone. Once an area is designated or reclassified to serious or above, the state is required to institute a photochemical assessment monitoring (PAMS) program under CAA section 182(c)(1) and its implementing regulations. PAMS programs require the seasonal monitoring of VOC and NO_X at certain locations in urban nonattainment areas such as downwind of the area's central business district (type 2 site) and in the downwind area(s) where maximum ozone concentrations are expected to occur (type 3 site).

When we reclassified the Phoenix area as serious in 1997, the design and deployment of a PAMS network became a requirement for the area. ADEQ has begun the implementation of the area's PAMS network and has deployed a type 2 site and is in the process of installing a type 3 site at this time. ADEQ's implementation schedule is generally consistent with our PAMS regulations. These sites are appropriately located to meet the PAMS siting requirements. The requirement for operating a PAMS network remains even though we are making a finding that the Phoenix area has attained the 1-hour ozone NAAQS. Data from the PAMS network, however, are not and cannot be used in making a determination of whether or not an area has met the ozone NAAQS because the network only monitors for ozone precursors and not for ozone itself.

Comment: ACLPI asserts that Maricopa County's monitoring network is inadequate because the County fails to operate all of its SLAMS sites year-round, stating that EPA regulations require states to monitor ozone at NAMS and SLAMS sites throughout the ozone season and that the ozone season in Arizona runs from January through December citing 40 CFR part 58, appendix D. ACLPI also claims that despite these regulations, more than half of the County's SLAMS sites operate only between April 1 and October 31. While exceedances of the 1-hour ozone standard may be rare during the winter months, they can occur. Consequently, there is no assurance that these exceedances would be captured by one of the annually operating sites due to wide spatial and temporal differences in ozone concentrations.

Response: We disagree with ACLPI's assertion that the ozone monitoring network is inadequate because a portion of the monitoring sites operates on a seasonal basis. Our regulations at 40 CFR 58.25 allow states to make modifications to their SLAMS network with the approval of EPA. The County made this modification to its operating schedule with the full concurrence of EPA Region 9 (see letter to Ben Davis, Air Quality AIRS Program Coordinator,

MCESD, from John R. Kennedy, Chief, Technical Support Office, Air Division, U.S. EPA Region 9, November 2, 1999). Moreover, we believe that the monitoring network, even with the seasonal monitors shut down, still provides for adequate spatial coverage of the Phoenix nonattainment area during the winter months. During the five months (November through March) the County shuts down eight sites—less than half of the ozone monitoring sites—leaving functional the remaining ozone network of ten sites operated by the County as well as a number of special purpose monitoring sites operated by ADEQ. The sites that are operated seasonally are generally the sites recording the lowest ozone concentrations.

Regarding the possibility of exceedances of the 1-hour ozone standard during the November to March period, we have reviewed ozone data for the Phoenix area during the period 1980 through 1999. In these 19 years, the Phoenix area has had only one exceedance in the month of April, three in the month of October, and none in the months of November, December, January, February and March. The vast majority of ozone exceedances in the Phoenix area occur in the months of June, July, August, and September when the full network is in operation.

We do agree with ACLPI's statement that ozone air monitoring serves other purposes besides recording exceedances. We believe that portion of the network that operates year round provides adequate data for any other assessment purpose.

B. Attainment Finding for the Phoenix Area

The 1-hour ozone NAAQS is 0.12 parts per million (ppm) not to be exceeded on average more than one day per year over any three-year period. 40 CFR 50.9 and appendix H. We determine if an area has attained the 1-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three-year period.[1] We use all available, quality assured monitoring data. Under CAA section 181(b)(2)(A), we must base our determination of attainment or failure to attain on the area's design value as of its applicable attainment deadline, which for the Phoenix metropolitan area was November 15, 1999. (See section III.C. for a discussion of air quality data after November 15, 1999 and consequences of future violations.)

The design value for the Phoenix metropolitan ozone nonattainment area for the 1997 to 1999 period was 0.113 ppm. The Phoenix metropolitan area did not record any exceedances of the 1-hour ozone standard at any monitoring site during the 1997 to 1999 period, so the average number of days over the standard at each monitor in the area for that three-year period was zero. The complete documentation of the monitoring data and design value calculation can be found in the TSD.

Because the area's design value was below the 0.12 ppm 1-hour ozone standard and the area averaged less than 1 exceedance per year at each monitor for the 1997 to 1999 period, we find that the Phoenix metropolitan area attained the 1-hour ozone standard by its Clean Air Act mandated attainment deadline of November 15, 1999.

III. Applicability of Clean Air Act Planning Requirements

A. EPA's Policy on the Applicability of Certain CAA Planning Requirements in Areas Attaining the 1-Hour Ozone Standard

CAA section 182(c) requires states with serious ozone nonattainment areas to comply with the Act's serious area SIP requirements. Three of these requirements are tied to the attainment demonstration. They are as follows:

1. A demonstration that this plan will result in emission reductions of ozone precursors of at least 3 percent per year from 1996 to 1999 (this provision is known as the 9 percent rate of progress (ROP) plan), CAA section 182(c)(2)(B);

2. A demonstration that the plan will result in attainment of the 1-hour ozone standard as expeditiously as practicable but not later than November 15, 1999, CAA section 182(c)(2)(A);

3. Contingency measures that will be undertaken if the area fails to make reasonable further progress, meet a rate of progress milestone, or to attain the standard by the applicable attainment date, CAA sections 172(c)(9) and 182(c)(9).

We believe that it is reasonable to interpret the CAA to not require these provisions for serious ozone nonattainment areas that are determined to be meeting the 1-hour ozone standard. We discuss our reasoning in the memorandum from John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, entitled ''Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995 (Seitz memo), in the proposal for this action and below in our response to comments.[2]

There are a number of other SIP requirements for serious ozone nonattainment areas that are not tied to whether the area has attained the 1-hour standard. These elements include an emission inventory of ozone precursors, reasonably available control technology for major sources and certain other sources; an enhanced motor vehicle inspection and maintenance program, and an enhanced ambient monitoring program. Arizona has already adopted and submitted these elements to us.[3]

B. Response to Comments on EPA's Policy

ACLPI also commented on the proposed determination regarding the applicability of certain CAA planning requirements to the Phoenix area. We respond to the most significant of these comments below. Our full response to all comments can be found in the TSD.

Comment: ACLPI claims that EPA has illegally exempted the Phoenix area from the 9 percent rate of progress (ROP)[4] demonstration, attainment demonstration and contingency measure requirements of the CAA. To support this contention, ACLPI makes two arguments:

(1) that, taken together, sections 172(c) and 182(c) require that a plan revision for a serious ozone nonattainment area include an attainment demonstration (sections 172(c)(1) and 182(c)(2)(A)), a 9 percent ROP demonstration (sections 172(c)(2) and 182(c)(2)(B)), and contingency measures (section 172(c)(9)); and

(2) that the May 10, 1995 policy memorandum on which EPA relies to

[1] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994 (Berry memorandum). While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply to the Phoenix area in spite of its serious classification because the finding of attainment is being made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[2] We have also explained at length in other actions our rationale for the reasonableness of this interpretation of the Act and incorporate those explanations by reference here. See 61 FR 20458 (May 7, 1996) (Cleveland-Akron-Lorrain, Ohio); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995) and 61 FR 31832–33 (June 21, 1996) (Grand Rapids, MI). Our interpretation has also been upheld by the United States Court of Appeals for the 10th Circuit in *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996).

[3] Serious Area Ozone State Implementation Plan for Maricopa County; submitted to EPA by the Arizona Department of Environmental Quality on December 14, 2000,

[4] Although section 182(b)(1) (moderate areas) and (c)(2)(B) (serious areas) contain the term ''reasonable further progress,'' EPA often uses the terms ''rate of progress'' and ''reasonable further progress'' interchangeably.

exempt the Phoenix area from these requirements flatly contradicts the CAA in that the Act contains no exceptions from its planning requirements for areas that are potentially eligible for redesignation based on monitoring data but have not yet met the redesignation requirements of sections 107(d)(3) and 175A. ACLPI contends that under section 175A of the Act until a nonattainment area is redesignated and a maintenance plan is approved, the requirements of part D ''shall continue in force and effect with respect to such area.'' (ACLPI acknowledges that the United States Court of Appeals for the 10th Circuit has upheld the May 10, 1995 memorandum but states that the case was incorrectly decided.)

Response: We proposed to find that these Clean Air Act requirements are not applicable to the Phoenix area because the area has attained the 1-hour ozone standard as demonstrated by three consecutive years without a violation. In the proposal for today's action, we discuss our determination that the Phoenix area attained the 1-hour ozone standard by its statutory deadline of November 15, 1999. See 65 FR 31859, 31861. This determination is documented in section II of the TSD.

The statutory basis for finding that these planning requirements are not applicable is described in the proposal and in the Seitz memo. See 65 FR 31859, 31861–31863; Seitz memo at 2–5.

Contrary to ACLPI's assertion, we are not granting the Phoenix area an exemption from any applicable requirements under part D. Rather, we have interpreted the requirements of sections 182(c)(2)(A) and (B) and 172(c)(9) as not being applicable once an area has attained the standard, as long as it continues to do so. (See section III.C. below.) This is not a waiver of requirements that by their terms clearly apply; it is a determination that certain requirements are written so as to be operative only if the area is not attaining the standard. Our interpretation is consistent both with the CAA's goal of achieving and maintaining clean air, and with the concomitant policy goal of avoiding costly and unnecessary emission reductions.

As discussed further below, the plain language of CAA sections 182(c)(2)(A) and (B) and 172(c)(9) does not clearly require attainment, reasonable further progress or contingency measure plans for areas that are designated nonattainment but that have already attained, and continue to attain, the national ozone standard. However, the very purpose of these plans is to bring areas that are violating the national ambient air quality standard for ozone into attainment. Consistent with this purpose, we interpret these requirements as inapplicable to an area that has attained the standard, but only for so long as the area remains in attainment. The requirements will again apply if such an area violates the standard. Thus, our interpretation is strictly limited to circumstances in which no further emission reductions are required for attainment.

The language of CAA sections 182(c)(2)(A) and (B) is ambiguous as to whether VOC reductions are required for serious nonattainment areas that have already attained the ozone NAAQS, but that have not yet been redesignated to attainment status. While the lead-in sentence to these two requirements states that ''* * * the State shall submit a revision to the applicable implementation plan * * *,'' subsection (c)(2)(A) calls for a demonstration that the plan will provide for attainment of the NAAQS ''by the applicable attainment date.'' Subsection (c)(2)(B) provides that the 9 percent plan ''will result in VOC emissions reductions * * * until the attainment date.'' Thus, the language of sections 182(c)(2)(A) and (B) as a whole begs the question of whether any reductions are required for areas that are already in attainment and therefore need no reductions in VOC emissions to achieve the ozone NAAQS by the attainment date.

Section 182(c)(2)(B) is entitled ''Reasonable Further Progress demonstration.'' The term ''reasonable further progress'' is defined as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by [EPA] for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' CAA section 171(1). This definition applies for the purposes of part D of title I of the CAA, which includes section 182(c). Thus, the term ''reasonable further progress'' requires only such reductions in emissions as are necessary to attain the NAAQS by the attainment date and no more. Accordingly, our interpretation of section 182(c)(2)(B) is consistent with the statutory definition of ''reasonable further progress.'' Moreover, our interpretation is tightly bound to the purpose of section 182(c)(2)(B) because we interpret that section's requirements to be applicable to areas that lapse back into violation prior to redesignation, and which therefore need additional progress towards attainment.

Furthermore, our interpretation of the requirements of section 182(c)(2)(B) is consistent with our interpretation of the general reasonable further progress requirements of CAA section 172. In the General Preamble interpreting certain provisions of part I of the CAA Amendments of 1990, we explained that the reasonable further progress requirements of CAA section 172(c)(2) do not apply when ''evaluating a request for redesignation to attainment, since, at a minimum, the air quality data for the area must show that the area has already attained [the NAAQS] * * * [and] RFP towards attainment will, therefore, have no meaning at that point.'' 57 FR at 13564. This interpretation of the requirements of section 172(c) was made shortly after the CAA Amendments of 1990 and we have consistently adhered to this interpretation. See 60 FR at 30190 (noting consistency of interpretation).

As with the RFP requirement, if an area has in fact monitored attainment of the standard, we believe there is no need for an area to make a further submission containing additional measures to achieve attainment. Thus the attainment demonstration requirement in section 182(c)(2)(A) would no longer apply under these circumstances. Seitz memo at 3.

We likewise determined that section 172(c)(9) does not require a contingency measure plan for nonattainment areas, such as Phoenix, which we determine to have attained the standard prior to redesignation. The contingency measures plan is required for an area that ''fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date * * *'' If, as in the case of Phoenix, we determine that an area has attained the standard by its attainment date, then by definition such an area is not one to which contingency measures apply. There is simply no failure to attain by the attainment date or make progress for which additional measures need be contingent. However, as with sections 182(c)(2)(A) and (B), we interpret section 172(c)(9)'s requirements to be applicable to areas that lapse back into violation prior to redesignation, and that therefore need additional progress towards attainment. Thus, our interpretation ensures that the purposes of section 172(c)(9)—to provide for reasonable progress towards, and the attainment of, clean air—will be served when necessary.

We also do not agree with ACLPI's contention that the Agency is violating section 175A(c) when it determines that the RFP, attainment and contingency measure requirements do not apply to areas that have attained the NAAQS.

Section 175A(c) provides that the requirements of part D remain in force and effect for an area until such time as it is redesignated. Section 175A(c) does not establish any additional substantive requirements; rather, it ensures that the requirements that do apply by virtue of other Act provisions continue to apply until an area is redesignated. If, however, an Act provision does not apply to an area or does not require that the particular area in question submit a SIP revision, section 175A(c) does not somehow add to the requirements with which the area must comply. In this instance, EPA is interpreting the underlying substantive requirements at issue so as not to apply to areas for so long as they continue to attain the standard. This does not violate section 175A(c); it is an interpretation of the substance of other provisions of the Act, a matter that is not affected by section 175A(c). Other requirements that do not depend on whether the area has attained the standard, such as VOC RACT requirements, continue to apply, however, and section 175A(c) ensures that they continue to apply until the area is redesignated.

Finally, in *Sierra Club,* the Tenth Circuit Court of Appeals upheld the Seitz memo as it applies to moderate ozone nonattainment areas. There, pending completion of the redesignation process, and based on three years of air quality data, EPA found that two Utah Counties that were designated as nonattainment for ozone and classified as moderate had attained the ozone NAAQS. As a result, EPA determined that the CAA's moderate area requirements for attainment and RFP demonstrations, and contingency measures (sections 182(b)(1)(A) and 172(c)(9)) were inapplicable. Finding that this determination was a logical extension of EPA's original, general interpretation in the General Preamble, the Court accorded deference to EPA's interpretation that once a moderate ozone nonattainment area has attained the NAAQS, the moderate area CAA requirements for RFP, attainment and contingency measures no longer apply. *Id.* at 1556. Although the Phoenix area is a serious nonattainment area, there is no doubt that the analogous serious area provisions serve exactly the same purpose as the provisions at issue in *Sierra Club* for moderate areas. Thus the Court's reasoning in that case applies equally to the Phoenix situation.

Comment: As stated above, ACLPI claims that the Act specifically requires that until a nonattainment area is redesignated and a maintenance plan approved the requirements of part D remain in force and effect with respect to such area, citing CAA section 175A(c). ACLPI argues that ''Congress determined that in the interest of protecting public health, EPA should not be permitted to waive nonattainment planning requirements until states could provide sufficient assurances that the NAAQS would be permanently maintained'' and that ''it is not the place of EPA to second guess this policy determination.''

Response: The requirement that states provide sufficient assurances that the NAAQS will be permanently maintained is a criterion for the redesignation of an area to attainment under section 107(d)(3)(E) and not for a finding of attainment under section 181(b)(1). We did not propose to redesignate the Phoenix area to attainment. Before we can do that, Arizona will need to provide, among other things, sufficient assurances in the form of an adequate maintenance plan that the NAAQS will be ''permanently'' maintained. As we have stated above we are not waiving these requirements but are determining that by the language of the CAA, they do not apply.

Comment: ACLPI also argues that there is a sound public policy reason for the Act's approach because a state's monitored compliance with a NAAQS may reflect only a temporary improvement in air quality due to unusually favorable meteorological conditions rather than ''permanent and enforceable reductions in emissions'' of a pollutant or pollutant precursors.

Response: The requirement to determine that clean air is the result of ''permanent and enforceable reductions in emissions'' is a criterion for the redesignation of an area to attainment under section 107(d)(3)(E) and not for a finding of attainment under section 181(b)(1). We did not propose to redesignate the Phoenix area to attainment.

That aside, we believe that the finding of attainment itself addresses in part the concern about unusually favorable meteorological conditions. We have long recognized that meteorological conditions have a profound effect on ambient ozone concentrations. In setting the current 1-hour ozone standard in 1979, we changed the form of the standard, i.e., the criterion for determining attainment, from a deterministic form ''no more than once per year'' to a statistical form ''when the expected number of days per year is less than or equal to one'' over a three-year period in order to properly account for the random nature of meteorological variations. The three-year period for averaging the expected number of exceedances was a reasoned balance between evening out meteorological effects and properly addressing real changes in emission levels. See the proposal and final actions promulgating the current 1-hour ozone standard at 43 FR 26962, 26968 (June 22, 1978) and 44 FR 8202, 8218 (February 8, 1979).

Moreover, the Phoenix area did not just barely meet the 1-hour ozone standard; it met the standard with room to spare. An area can record up to three days of air quality above the 1-hour ozone standard at any one monitor during a successive three-year period and still be considered attaining the standard. The Phoenix area fared much better than that, recording not a single day over the standard at any of its 20 ozone monitors from 1997 through 1999. This record of clean air has carried into a fourth year. During the 2000 ozone season, the Phoenix area again did not record a single exceedance of the 1-hour ozone standard. See TSD at pp. 12–13. The area's design value, which is a measure of the severity of an area's ozone problem and is used to establish an area's initial classification, was 10 percent below the standard and a 16 percent drop from its design value for the preceding three-year (1994–1996) period.

Furthermore, under EPA's redesignation guidance, there are two aspects to ''permanent and enforceable emission reductions.'' One is unusually favorable meteorology. The other is a temporary reduction in emission rates caused by shutdowns or reduced production due to temporary adverse economic conditions. See Memorandum, John Calcagni, Director, Air Quality Management Division (OAQPS), to Regional Air Directors, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992, page 4. ''Adverse'' is not a term that could be applied to the economy of the greater Phoenix area over the last several years.

In addition, we believe that the Phoenix area's record of clean air can be tied directly to permanent and enforceable emission reductions. The area is subject to a comprehensive ozone control strategy that includes national on-road motor vehicle standards, national non-road engine standards, national consumer product standards, Arizona's cleaner burning gasoline and vehicle emission inspection programs, and Maricopa County's industrial and commercial source rules. This strategy leaves few, if any, sources of VOC unregulated.

Comment: ACLPI claims that EPA implicitly recognizes the possibility that the Phoenix area may violate the ozone NAAQS again. However, ACLPI states

that EPA then dismisses this possibility with the observation that it can require a SIP revision containing the missing elements if a violation occurs. ACLPI asserts that this approach will not help ''those who needlessly suffer from unhealthy ozone levels that could have been avoided through compliance with the Act, noting that SIP revisions take months, sometimes years to complete.'' Finally, ACLPI contends that the ''more responsible policy is the one adopted by Congress which requires states to adhere to the Act's nonattainment planning requirements until they can demonstrate that redesignation of an area to attainment is warranted.''

Response: The Seitz memo explicitly addresses the consequences of future violations of the 1-hour ozone standard. In the proposal for today's action, we merely described this policy as it would apply to the Phoenix area if the area were to violate the standard in the future. While this could be interpreted as acknowledging the possibility of future violations in the Phoenix area, it is not an acknowledgment of the probability of future violations.

Furthermore, ozone will continue to be controlled in the Phoenix area in spite of this finding of attainment and the concurrent finding that certain CAA planning requirements no longer apply. As noted above, the State of Arizona and the Maricopa County Environmental Services Department, the local air pollution control agency, have adopted a comprehensive ozone control program for the Phoenix area. All these existing ozone control measures remain in place and these agencies remain obligated to fully implement and enforce them. Most are SIP-approved or have been submitted for SIP approval. See appendix A of the ''Serious Area Ozone State Implementation Plan for Maricopa County,'' submitted to EPA on December 14, 2000.

In addition, the area will be the beneficiary of substantial new controls over the next few years. The two largest source categories of VOC emissions in the Phoenix area, in order, are gasoline-powered on-road vehicles and gasoline-powered non-road engines. Several already adopted state and federal measures will be implemented over the next few years that will further reduce emissions from these categories. These measures include Arizona's implementation of the final, more stringent cut points for the Vehicle Emissions Inspection Program (VEI) and expansion of that program and the State's Cleaner Burning Gas (CBG) program into growing areas that surround the core Phoenix urbanized area. *Id.*

Nationally, we have issued our tier 2 on-road motor vehicle standards covering both light duty cars and light duty trucks including sports utility vehicles. 65 FR 6697 (February 10, 2000). For non-road engines, we have established emission limitations for new non-road engines of all types. Many of these standards have tiered emission standards that become increasingly stringent in future years. See, for example, the tier 2 standards for small gasoline-powered nonroad engines at 65 FR 24267 (April 25, 2000).

The Phoenix area will also benefit from national standards on the VOC content of consumer products required by CAA section 183(e). These standards control the VOC content of such consumer products as paints, hair sprays, household pesticides, and miscellaneous other consumer goods. 63 FR 48819 (September 11, 1998). We also continue to issue maximum available control technology (MACT) standards under CAA section 112(d) to reduce hazardous air pollutants from stationary sources, most of which target VOC emissions. 40 CFR part 61.

Finally, we note that under ACLPI's construction of the CAA, the Phoenix area would face the prospect of mandatory sanctions under CAA section 179(a) for failing to submit the 9 percent reasonable further progress, attainment demonstration, and contingency measures plans. For example, under ACLPI's interpretation of CAA section 182(c)(2)(B), Arizona would have to adopt controls for the Phoenix area that would reduce VOC emissions by 9 percent despite the fact that the area has attained and continues to attain the 1-hour ozone NAAQS. These measures would impose additional costs upon the area's residents although they are unnecessary for clean air. Thus, ACLPI's interpretation would not only require measures that are not necessary for attaining the standard, it could also lead to sanctions for failing to submit these measures. EPA's contrary interpretation would not require unnecessary emission reductions or sanctions for a state's failure to undertake such reductions.

C. Effects of the Determination on the Phoenix Area and of a Future Violation on This Determination

During the 2000 ozone season, the Phoenix area continued its record of clean air, experiencing no exceedances of the 1-hour ozone standard. In short, the area remains in attainment of the 1-hour ozone standard as of the date of this final action. Based on our finding that the Phoenix metropolitan area is attaining the 1-hour ozone standard, we are finding that the State of Arizona is no longer required to submit a 9 percent ROP plan, an attainment demonstration, or contingency measures for the area.

The lack of a requirement to submit these SIP revisions will exist only as long as the Phoenix metropolitan area continues to attain the 1-hour ozone standard. If we subsequently determine that the Phoenix area has violated the 1-hour ozone standard (prior to a redesignation to attainment), the basis for the determination that the area need not make these SIP revisions would no longer exist. Thus, a determination that an area need not submit these SIP revisions amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard.

Should the Phoenix metropolitan area begin to violate the 1-hour standard, we will notify Arizona that we have determined that the area is no longer attaining the 1-hour standard. We also will provide notice to the public in the **Federal Register**. Once we determine that the area is no longer attaining the 1-hour ozone standard then Arizona will be required to address the pertinent SIP requirements within a reasonable amount of time. We will set the deadline for the State to submit the required SIP revisions at the time we make a nonattainment finding.

Arizona must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

D. Effect of the Determination on Transportation Conformity

CAA section 176(c) requires that federally funded or approved transportation actions in nonattainment areas ''conform'' to the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions to rise above the levels needed for progress toward and attainment with the air quality standards. These motor vehicle emissions levels are set in an area's attainment, maintenance, and/or RFP demonstration and are known as the ''transportation conformity budget.''

EPA set the current ozone conformity budget for the Phoenix metropolitan

area in our revised federal 15 percent ROP plan. 64 FR 36243 (July 6, 1999). Today's finding (i.e., that the Phoenix area has attained the 1-hour ozone standard and that the State no longer needs to submit attainment and ROP/RFP demonstrations) will not affect the continued applicability of the existing budget. This budget will remain applicable until Arizona submits a maintenance demonstration with a revised transportation conformity budget (or until Arizona submits attainment and RFP/ROP demonstrations with a revised budget should the Phoenix area again violate the 1-hour ozone standard) and we find the new budget adequate.

IV. Administrative Requirements

This action merely finds that the Phoenix area has attained a previously established national ambient air quality standard based on an objective review of measured air quality data. It also determines that certain Clean Air Act requirements no longer apply to the Phoenix area because of the attainment finding. It will not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental or private entity. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this rule is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. It does not contain any unfunded mandate or significantly or uniquely affects small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. As required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 2001.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 14, 2001.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 01–13512 Filed 5–29–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–314 RM–8396]

Radio Broadcasting Services; Cadiz and Oak Grove, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Ham Broadcasting, Inc. this document sets aside the action in this proceeding which substituted Channel 293C3 for Channel 292A at Cadiz, reallotted Channel 293C3 to Oak Grove, and modified the Station WKDZ–FM license to specify operation on Channel 293C3 at Oak Grove. *See* 61 FR 31449, published June 20, 1996. This document also dismisses an Application for Review filed by Southern Broadcasting Corporation directed against that action. The Station WKDZ–FM license will specify operation on Channel 293C3 at Cadiz in accordance with the grant of a construction permit application (File No. BPH–20000427ABE). With this action, the proceeding is terminated.

DATES: Effective May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 93–314, adopted May 9, 2001, and released May 11, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW.,

Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Oak Grove, Channel 293C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–13449 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1153; MM Docket No. 01–34; RM–10061]

Radio Broadcasting Services; Warsaw, Windsor, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of D&H Media, permittee of Station KWKJ(FM), Warsaw, Missouri, reallots Channel 253A from Warsaw to Windsor, Missouri. Channel 253A is allotted at Windsor in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction at coordinates 38–31–56 NL and 93–31–19 WL.

DATES: Effective June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–34, adopted April 25, 2001, and released May 4, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 253A at Warsaw and add Windsor, Channel 253A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–13450 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1153; MM Docket Nos. 01–33; RM–10060]

Radio Broadcasting Services; Caro, and Cass City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Edwards Communications, L.C., licensee of Station WIDL(FM),Caro, Michigan, grants the substitution of Channel 221C3 for Channel 221A at Caro, Michigan, and the reallotment of Channel 221C3 from Caro to Cass City, Michigan. Channel 221C3 is allotted at Cass City in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at a site 4.9 kilometers (3.0 miles) northeast of the community at coordinates 48–38–20 NL and 83–08–38 WL. A counterproposal filed by Edward Czelada is dismissed as defective.

DATES: Effective June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–33, adopted April 25, 2001, and released May 4, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan is amended by removing Caro, Channel 221A and add Cass City, Channel 221C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–13452 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1185; MM Docket No. 99–246; RM–9593; RM–9770]

Radio Broadcasting Services; Winslow and Mayer, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies a Petition for Partial Reconsideration filed on behalf of Desert West Air Ranchers Corporation directed to the *Report and Order* in this proceeding reallotting Channel 236C from Winslow to Mayer, Arizona, as optionally proposed, as that community's first local aural transmission service (RM–9770), in lieu of previously proposed Camp Verde, Arizona (RM–9593), and modifying the license for Station KFMR(FM) accordingly. *See* 65 FR 36374, June 8, 2000. Desert West objects to the

dismissal of its alternate proposal to allot Channel 236C to Sun City West, Arizona (RM–9770), and the selection of Mayer as its community of license. The petition for partial reconsideration is denied as it does not meet the limited provisions set forth in the Commission's Rules under which a rule making action will be reconsidered. This document also announces that we will no longer be considering optional or alternative proposals by a single party in a single rulemaking proceeding. With this action, this docketed proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* in MM Docket No. 99–246, adopted May 2, 2001, and released May 11, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–13453 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001127331–1044–02; I.D. 052301B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for *Loligo* Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the exclusive economic zone (EEZ) for the second quarter of the year is closed. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) per trip per calendar day of *Loligo* squid for the remainder of the quarter. This action is necessary to prevent the fishery from exceeding the Quarter II quota and allow for rebuilding of this overfished stock, while allowing for fishing throughout the year.

DATES: Effective 0001 hours, May 29, 2001, through 2400 hours, July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104, fax 978–281–9135, e-mail myles.a.raizin.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum optimal yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2001 specification of DAH for *Loligo* squid was set at 17,000 mt (66 FR 13024, March 2, 2001). This amount is allocated by quarter, based on the following table.

TABLE. *Loligo* QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons
I (Jan–Mar)	33.23	5,649
II (Apr–Jun)	17.61	2,994
III (Jul–Sep)	17.30	2,941
IV (Oct–Dec)	31.86	5,416
Total	100.00	17,000

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to: Notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter II, has been harvested. Therefore, effective 0001 hours, May 29, 2001, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, July 1, 2001, when the Quarter III quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–13534 Filed 5–24–01; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000906253–1117–02; I.D. 061500E]

RIN 0648–AL51

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement portions of Amendment 14 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). This final rule makes minor changes to language regarding spawning escapement and management goals; implements a new recreational allocation to the Port of La Push and adjusts the Neah Bay allocation accordingly; adds preseason flexibility for recreational port allocations north of Cape Falcon; and implements preseason flexibility in setting recreational port allocations or recreational and commercial allocations north of Cape Falcon to take advantage of selective fishing opportunities for marked hatchery fish. The intended effect of this final rule is to employ management measures that minimize impacts to

species, stocks, or size/age classes of concern, while maximizing access to harvestable fish.

DATES: Effective June 29, 2001.

ADDRESSES: Copies of Amendment 14, the final supplemental environmental impact statement (FSEIS)/regulatory impact review (RIR)/initial regulatory flexibility analysis (IRFA), and the appendices, including the Review of 1999 Ocean Salmon Fisheries, are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

Copies of the final regulatory flexibility analysis (FRFA) are available from Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070, fax: 206-526-6376; or Rebecca Lent, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, fax: 562-980-4018.

FOR FURTHER INFORMATION CONTACT: Christopher L. Wright at 206– 526–6140; Svein Fougner at 562–980–4040; or Dr. Donald O. McIsaac at 503–326–6352.

SUPPLEMENTARY INFORMATION:

Background

The Secretary approved the Salmon FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, in 1978. The Council has amended the Salmon FMP 14 times since 1978. The regulations are codified at 50 CFR part 660, subpart H. The Salmon FMP was amended annually from 1979 to 1983; however, in 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual FMP amendments.

The Council prepared Amendment 14 to the Salmon FMP and submitted it on June 12, 2000, for Secretarial review. NMFS published a notice of availability for Amendment 14 in the **Federal Register** on June 27, 2000 (65 FR 39584), announcing a 60-day public comment period, which ended on August 28, 2000. NMFS approved Amendment 14 on September 27, 2000. The proposed rule was published in the **Federal Register** on October 20, 2000 (65 FR 63047), with the 45-day public comment period ending on December 4, 2000. NMFS received one comment; the comment addressed provisions of Amendment 14 that were not the subject of the proposed rule. The final rule remains unchanged from the proposed rule.

Only some parts of Amendment 14 are codified in the final rule. Those parts not codified revise the Salmon FMP to bring it into compliance with the Sustainable Fisheries Act's (SFA) 1996 amendments to the Magnuson-Stevens Act. The most significant changes include a new definition of optimum yield (OY); a bycatch definition and new requirements to reduce bycatch; new requirements designed to prevent overfishing and rebuild overfished stocks; and the designation of Essential Fish Habitat (EFH), with a discussion of threats to EFH and recommended measures to conserve and enhance EFH. A new section in chapter 1 entitled ''What This Plan Covers'' was added to the Salmon FMP to provide a clear description of management actions included in the document. In addition, the amendment provides information on fishery-specific stock impacts and updates the fishery description to reference new appendices.

Those parts of Amendment 14 codified in the final rule make minor changes to language regarding escapement and management goals; implement a new recreational allocation to the Port of La Push and adjusts the Neah Bay allocation accordingly; add preseason flexibility for recreational port allocations north of Cape Falcon; and implement preseason flexibility in setting recreational port allocation or recreational and commercial allocations north of Cape Falcon to take advantage of selective fishing opportunities.

The former ''Escapement and Management Goals'' section, § 660.410(a), was changed to a new ''Conservation Objectives'' section.

Amendment 14 establishes a recreational allocation for the La Push Port area separate from the Neah Bay port area, and the Annual Actions section (660.408(c)(v)) was modified accordingly. The La Push subarea allocation is now set at 5.2 percent, which is approximately 20 percent of the former combined Neah Bay/La Push allocation. This portion is equal to the level provided to La Push during the annual preseason process beginning in 1990. In addition, during years when there is an Area 4B add-on fishery inside Washington internal waters (which benefits only Neah Bay), 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages for Westport and La Push. The increase to Westport and La Push will be subtracted from the Neah Bay ocean share to maintain the same total harvest allocation north of Leadbetter Point. Therefore, La Push would receive 2.6 percent of the basic coho allocation plus 1.2 percent of the Area 4B add-on.

Section 660.408(c)(v)(A) was modified to allow flexibility to deviate from Salmon FMP subarea quotas in order to meet recreational fishery objectives, if those measures are agreed to by representatives of the affected ports. In addition, the regulation establishes a Council process to deviate from the non-Indian recreational and/or commercial allocations north of Cape Falcon to selectively harvest hatchery-produced coho salmon, while not increasing impacts to natural stocks.

Minor changes to the regulatory language in 50 CFR part 660 necessary to implement Amendment 14 were also made.

Comments and Responses

NMFS received one comment regarding the proposed rule; however, this comment did not refer to the changes proposed in the rule.

Comment: The National Association of Home Builders (NAHB) et al., represented by Perkins Coie, LLP, commented on the portion of Amendment 14 that deals with EFH. The NAHB believes that the EFH provisions in Amendment 14 should be included in the proposed rule and that an IRFA should have been prepared for them.

Response: The proposed rule includes only those regulatory changes needed to implement Amendment 14. The designation of EFH by Amendment 14 does not require implementing regulations, and therefore, an IRFA is not required. The RFA only requires completion of regulatory flexibility analyses when an agency promulgates regulations. Under the Magnuson-Stevens Act, an FMP must describe and identify EFH, but implementing regulations for an EFH designation are not required. If implementing regulations are required in the future (for example, to avoid adverse effects on EFH caused by fishing), regulatory flexibility analyses may be prepared in accordance with applicable law.

Classification

NMFS has determined that Amendment 14 is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws.

The Council prepared an IRFA describing the economic impacts to small entities of all the alternatives considered in the proposed rule. No comments were received on the IRFA, except as described above. A copy of the

IRFA is available from the Council (see **ADDRESSES**).

NMFS, Northwest Region, prepared an FRFA based on the IRFA in compliance with 5 U.S.C. 604(a). The FRFA indicated that the rule will not have a significant economic impact on a substantial number of small entities. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The economic effects of the regulations are expected to be generally positive. The regulatory changes are intended to reallocate fish among small entities with the intent of increasing overall harvest. The Port of La Push regulations formalize practices that have been employed for a number of years; La Push would receive 2.6 percent of the basic coho allocation plus 1.2 percent of the Area 4B add-on. Flexibility to deviate from subarea allocations in order to meet recreational objectives is expected to result in only positive economic effects. Flexibility in setting preseason recreational port allocations or recreational and commercial allocations north of Cape Falcon for selective fishing on hatchery stock coho would likely lead to positive economic effects on ocean fisheries because such measures result in increased fishing opportunities when such fish are available. These selective fisheries are open primarily in August and September, although the Council may consider opening selective fisheries at other times. Compared to the original allocation scheme, the selective fishery regime does not increase the mortality of natural stocks. Other allocation objectives (i.e., treaty Indian, or ocean and inside allocations) are addressed during the negotiations in the North of Cape of Falcon Forum.

The general effects of the regulatory changes are to provide flexibility to the Council's decision making processes and allow increased fish harvest levels, when possible, through pre-season allocation setting procedures. User groups (non-tribal ocean troll and ocean recreational fisheries) participate directly in the consultative processes, so it is unlikely that any single group will suffer economically while some or all user groups would likely benefit. The consultation process is designed to provide the maximum economic benefits to all user groups.

The intended effect of this final rule is to employ management measures that minimize impacts to species, stocks, or size/age classes of concern, while maximizing access to harvestable fish. This is accomplished through management measures including gear restrictions, time/area closures, and catch or retention restrictions that allow fishermen to harvest marked hatchery salmon and release natural-origin fish.

Analysis of 1996 fishery information shows that selective ocean coho harvest could be increased by over 300 percent without impacting natural stocks. Without such selective fisheries, total salmon harvest would have to be sharply reduced to protect depressed natural stocks. These procedures also allow managers to make in-season trades between ocean fisheries, and between user groups, in order to increase harvest opportunities for all user groups.

Insufficient data preclude a quantitative analysis; however, the Council's qualitative cost-benefit summary in support of Executive Order 12866 assesses the direct and indirect economic effects of the regulatory changes. This analysis shows that these changes would allow increased numbers of recreational and charter boat salmon fishing trips. If this is realized, aggregate catch would increase, but depending on the magnitude of increase in the number of recreational and charter trips, individual catch per trip could decline. The ocean troll fishery quotas would not be directly reduced as a result of the regulatory changes, but cost per unit of harvest may increase because of the selective fishery regulations. Indirect economic effects on inside fisheries (fisheries occurring in state internal waters) may be positive or negative, depending on which selective fisheries are employed in the ocean and inside fisheries. The State of Washington has adopted selective fishing practices for inside coho fisheries. Selective practices for inside chinook fisheries are still under development because of the difficulty in modeling selective fishery impacts on chinook stocks. However, ocean harvests of inside chinook stocks are minimal and managing such stocks will be primarily driven by Endangered Species Act (ESA) requirements and State of Washington decisions concerning the future of its fisheries.

The final rule has been determined to be not significant for the purposes of Executive Order 12866.

The NMFS Northwest Region has completed a section 7 informal consultation under the ESA on the effects of Amendment 14 on listed salmon stocks. Amendment 14 does not by itself authorize any fishing or other activity that would result in the take of listed fish. It modifies certain aspects of the current Salmon FMP but in no way affects the existing Salmon FMP requirements that management measures comply with NMFS ESA consultation standards for listed species. Three of the Amendment 14 components (overfishing, EFH, and bycatch) will result in neutral effects or in more conservative management of non-listed salmon stocks, and should therefore provide greater protection to natural stocks of listed and non-listed species. While there are some uncertainties regarding the effects of selective fisheries on naturally spawning stocks, NMFS retains the authority and responsibility for ensuring that annual management measures developed under the Salmon FMP comply with ESA consultation standards, and that analysis of these measures is based on the best available science. The remaining elements of the amendment, including recreational allocation, definition of OY, and various editorial changes will have no effect on management of listed stocks.

Based on these considerations, NMFS concluded that Amendment 14 and its implementing regulations are not likely to adversely affect any of the salmon stocks presently listed under ESA or their critical habitat.

The Council prepared an FSEIS for Amendment 14. It provides an updated description of the fishery, and clarifies what is covered in the Salmon FMP. To be consistent with the SFA, it redefines optimum yield, provides new criteria to prevent or end overfishing, describes and defines essential fish habitat, and establishes salmon bycatch reporting specifications. The FSEIS has been incorporated in the Amendment 14 document, and may be obtained from the Council (see **ADDRESSES**). A notice of availability of the FSEIS was published on August 11, 2000 (65 FR 49237).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.402, the definition ''Pacific Coast Salmon Plan'' is added in alphabetical order to read as follows:

§ 660.402 Definitions.

* * * * *

Pacific Coast Salmon Plan (PCSP or Salmon FMP) means the Fishery Management Plan, as amended, for commercial and recreational ocean salmon fisheries in the Exclusive Economic Zone (EEZ)(3 to 200 nautical miles offshore) off Washington, Oregon, and California. The Salmon FMP was first developed by the Council and approved by the Secretary in 1978. The Salmon FMP was amended on October 31, 1984, to establish a framework process to develop and implement fishery management actions. Other names commonly used include: Pacific Coast Salmon Fishery Management Plan, West Coast Salmon Plan, West Coast Salmon Fishery Management Plan.

* * * * *

3. In § 660.408, the first two sentences in paragraph (c)(1)(ii), paragraph (c)(1)(v) and paragraph (c)(1)(v)(A), and the last sentence in paragraph (c)(1)(vi) are revised; paragraph (c)(1)(viii) is redesignated as paragraph (c)(1)(ix), and paragraph (c)(1)(ix) is redesignated as paragraph (c)(1)(x) and a new paragraph (c)(1)(viii) is added to read as follows:

§ 660.408 Annual actions.

* * * * *

(c) * * *

(1) * * *

(ii) *Deviations from allocation schedule*. The initial allocation may be modified annually in accordance with paragraphs (c)(1)(iii) through (viii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (c)(1)(ix) and (x) of this section. ***

* * * * *

(v) *Recreational allocation*. The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the four major recreational subareas as described in the coho and chinook distribution sections below. The Council may deviate from subarea quotas to meet recreational season objectives, based on agreement of representatives of the affected ports and/or in accordance with section 6.5.3.2 of the Pacific Coast Salmon Plan, regarding certain selective fisheries. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives.

(A) *Coho distribution*. The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50 percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport), 5.2 percent to the subarea between Queets River and Cape Flattery (La Push), and 20.8 percent to the area north of the Queets River (Neah Bay). In years when there is an Area 4B (Neah Bay) fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages for Westport and La Push. The increase to Westport and La Push will be subtracted from the Neah Bay ocean share to maintain the same total harvest allocation north of Leadbetter Point. Each of the four recreational port area allocations will be rounded, to the nearest hundred fish, with the largest quotas rounded downward, if necessary, to sum to the preseason recreational allowable ocean harvest of coho north of Cape Falcon.

* * * * *

(vi) *Inseason trades and transfers*. * * * Inseason trades or transfers may vary from the guideline ratio of four coho to one chinook to meet the allocation objectives in paragraph (c)(1)(ix) of this section.

* * * * *

(viii) *Selective fisheries*. Deviations from the initial gear and port area allocations may be allowed to implement selective fisheries for marked salmon stocks as long as the deviations are within the constraints and process specified in section 6.5.3.2 of the Pacific Coast Salmon Plan.

* * * * *

4. In § 660.410, the section heading and paragraphs (a) and (b)(1) are revised to read as follows:

§ 660.410 Conservation objectives.

(a) The conservation objectives are summarized in Table 3-1 of the Pacific Coast Salmon Plan.

(b) * * *

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council, the Scientific and Statistical Committee, and the Salmon Technical Team, justifies modification of a conservation objective; except that the 35,000 natural spawner floor for Klamath River fall chinook may be changed only by amendment.

* * * * *

[FR Doc. 01–13431 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 052301F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by the Offshore Component in the Western Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the Pacific cod A season allowance specified for the offshore component in the Western Regulatory Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 24, 2001, until 2400 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 1,098 metric tons

(mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001). The fishery by vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area was closed under § 679.20(d)(1)(i) on April 26, 2001 (66 FR 21691, May 1, 2001) and reopened on May 18, 2001 (66 FR 28132, May 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 A season Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,088 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the Pacific cod A season allowance specified for the offshore component in the Western Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the Pacific cod A season allowance in the Western Regulatory Area of the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 01–13517 Filed 5–24–01; 3:13 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 104
Wednesday, May 30, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 34, 35, 36, 39, 40, 50, 70, 72, and 76

[Docket No. PRM–30–63]

Natural Resources Defense Council; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Natural Resources Defense Council (PRM–30–63). The petitioner requested that the Commission's regulations be amended to require that no license be issued to, or retained by, any individual or organization whose principal owner, officer, or senior manager: (1) Fails to report engaging in, or having knowledge or evidence of, bribery of, or extortion by, Federal, State, or other regulatory officials; or, (2) has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State. NRC is denying the petition because the petitioner has neither identified a statutory requirement for promulgating the regulation nor identified a need for such regulation since NRC already has the authority to take the actions requested by the petitioner, and because the NRC believes that imposition of these types of actions should be considered on a case-by-case basis.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents are also available on the NRC's rulemaking website at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: John W. Lubinski, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Telephone: (301) 415–2740.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 2000 (65 FR 40548), NRC published a notice of receipt of a petition for rulemaking filed by the Natural Resources Defense Council. The petitioner requested that no license be issued to, or retained by, any individual or organization whose principal owner, officer, or senior manager: (1) Fails to report engaging in, or having knowledge or evidence of, bribery of, or extortion by, Federal, State, or other regulatory officials; or, (2) has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State.

Public Comments on the Petition

The notice of receipt of petition for rulemaking invited interested persons to submit comments. NRC received two comment letters: one from a law firm and one from an organization of the nuclear energy and technologies industry. The comments focused on the main elements of the petition. Both commenters recommended that NRC deny the petition. The following comments were provided and were reviewed and considered in NRC's decision:

1. Both commenters stated that NRC already has the authority to consider character and integrity of applicants and licensees when making licensing decisions. The commenters included citations from the Atomic Energy Act (AEA) and past statements by the Commission to support their position. NRC agrees that it currently has such authority and has used such authority in making licensing decisions or taking enforcement actions based on the character and integrity of an applicant or licensee.

2. One commenter stated that the petition does not identify a regulatory ''gap'' that needs to be filled. The commenter goes on to state that in such cases NRC has routinely denied rulemaking petitions. NRC agrees that the petitioner did not identify a regulatory ''gap,'' and does not believe that such a ''gap'' exists. As already discussed, NRC has the authority to take the actions identified by the petitioner.

3. Both commenters stated that NRC has the essential ability and flexibility to consider all relevant circumstances, both positive and negative, in making enforcement decisions. The commenters believe that NRC should continue to make enforcement decisions on a case-by-case basis using appropriate discretion and judgment. One of the commenters goes on to state that singling out certain specific acts (which are neither exhaustive nor comprehensive of actions relevant for determining character) that trigger denial or revocation of a license without regard to the particular circumstances would be inconsistent with past Commission policy. NRC agrees with the commenters that making such a change would narrow the Commission's discretion by eliminating its ability to make character determinations on the basis of all relevant circumstances.

4. Both commenters stated that certain language in the petition, specifically, ''flagrantly undermining the integrity of the regulatory process of NRC or that of an Agreement State,'' is too vague. The commenters believe this wording would raise serious questions regarding adequate notice and due process and would not withstand judicial scrutiny. NRC does not agree with the commenters on this issue. Specifically, the Commission derives its authority to evaluate character and integrity from the AEA. Promulgation of specific rule language would further clarify the criteria used in performing such evaluations. Therefore, while NRC believes that specific rule language on this issue is not warranted, NRC does not agree with the commenters that the proposal by the petitioner should be denied based on the fact that the language is too vague.

5. Both commenters stated that the proposed regulation does not take into account NRC actions against licensees versus individuals. Specifically, the proposed regulation would require denial or revocation of a license based on the acts of one individual. Instead, the commenters believe that NRC should continue to consider on a case-by-case basis whether the acts of an individual should be imputed to the licensee. NRC agrees that the petitioner has not provided sufficient justification

to change the NRC's current practice of considering on a case-by-case basis whether the acts of an individual should be imputed to the licensee.

6. One commenter stated that any attempt to apply such a regulation based on past conduct of a licensee, such as acts prior to promulgation of the regulation, would violate the prohibition against retroactive rulemaking. NRC does not agree that approval of the petition would represent retroactive rulemaking. Specifically, as already discussed, NRC already has authority to consider character and integrity of applicants and licensees when making licensing decisions. As such, evaluations of character and integrity are not limited to acts that occur after promulgation of a rule or requirement that provides greater detail with respect to the matter of character and integrity. However, as part of using discretion and judgement in determining appropriate actions, NRC may consider the age of the actions in question.

Reasons for Denial

NRC is denying the petition for the following reasons:

1. The petitioner has not identified a statutory requirement for promulgating the regulation requested in the petition. In addition, the petitioner did not identify a need for such regulation nor a gap in the current regulatory process. Specifically, NRC already has authority under the AEA to deny or revoke a license, or ban an individual from licensed activities, if adequate protection of public health and safety is not provided. NRC currently considers the integrity and character of individuals in determining adequate protection. Section 182a of the AEA states, in part, that license applications shall specifically state the information that NRC determines is necessary to evaluate the character of the applicant. The information must enable NRC to find that the licensed activities will provide adequate protection of health and safety. Further, after filing the original application and before expiration of a license, NRC may require additional information in order to determine whether the license should be modified or revoked. In considering the integrity and character of an applicant or licensee, NRC would consider engaging in bribery or extortion or acts that undermine the integrity of the regulatory process. Therefore, if NRC determines that it does not have reasonable assurance of adequate protection of health and safety based upon, in part, the character of an applicant or licensee, NRC may deny or revoke a license. Promulgation of specific rule language is, therefore, not necessary.

2. NRC does not agree with the petitioner that the regulations should specify the actions that NRC would take against an applicant or licensee that has engaged in bribery of, or extortion by, any Federal, State or other regulator or has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State. Specifically, NRC believes that all enforcement actions, including those involving situations identified by the petitioner, should be reviewed on a case-by-case basis and dispositioned according to the merits of the specific case using appropriate discretion and judgment. In addition, the current Enforcement Policy, NUREG–1600, states that in deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee based on the willful acts of an individual, NRC recognizes that judgments will have to be made on a case-by-case basis. The policy includes factors that will be considered in making such decisions. NRC does not believe that the petitioner has provided sufficient information nor justification for NRC to consider changing its practice of deciding enforcement actions based on case-by-case consideration of these factors.

For these reasons, NRC does not believe that the rulemaking requested by the Petitioner should be promulgated and; therefore, NRC denies the petition.

Dated at Rockville, Maryland, this 14th day of May, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–13493 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG52

Decommissioning Trust Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations relating to decommissioning trust provisions for nuclear power plants. The NRC proposes to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Until recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised such authority. With deregulation, this oversight may cease and the NRC may need to take a more active oversight role.

DATES: Submit comments on the proposed rule and accompanying regulatory guide August 13, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN. : Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this rulemaking, including comments received, the draft regulatory analysis and the draft Regulatory Guide, DG–1106, ''Proposed Revision 1 of Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors,'' may be examined, and/or copied for a fee, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff

at 1–800–397–4209, (301) 415–4737, or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail *bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Until recently, rate regulators have generally exercised direct oversight of the terms and conditions of decommissioning trust agreements. Extensive NRC involvement was not necessary. Because this oversight may cease with deregulation, the NRC believes it needs to take a more active oversight role. 10 CFR 50.75(e) allows sinking fund payment or prepayment into external decommissioning trusts as two of several acceptable financial assurance methods. These methods are used by virtually all nuclear power plant licensees. The NRC included sample language for decommissioning trust agreements in guidance issued in August 1990 (Regulatory Guide 1.159, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors''), but the NRC's regulations do not explicitly require that specific terms and conditions be included in the decommissioning trust agreements or that the decommissioning trust agreements be in a form acceptable to the NRC. This proposed rule attempts to remedy this situation.

II. Rulemaking Initiation

In a staff requirements memorandum (SRM) dated August 10, 1999, the Commission directed the NRC staff to initiate a rulemaking to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. This SRM was in response to SECY–99–170 (July 1, 1999), ''Summary of Decommissioning Fund Status Reports,'' in which the NRC staff noted that it intended to continue to review decommissioning trust agreements in license transfers on a case-by-case basis and impose appropriate conditions in the orders approving these transfers. However, the NRC staff believes that efficiency would be increased if the NRC codified this practice generically in the regulations. Also, based on experience with approving the transfers of the operating licenses of the Three Mile Island Unit 1, Pilgrim, Clinton, Oyster Creek, and other nuclear power stations, the NRC staff believes this rulemaking could expedite similar transfers in the future by providing increased regulatory predictability. The proposed rule and accompanying revisions to regulatory guidance, if adopted, would provide uniform decommissioning trust terms and conditions for all power reactor licensees. The NRC staff issued a rulemaking plan for Decommissioning Trust Provisions, SECY–00–0002, on December 30, 1999. The plan called for amending 10 CFR 50.75 and a revision to Regulatory Guide 1.159, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors.'' The Commission approved the plan on February 9, 2000, directing the NRC staff to include specific trust fund terms and conditions necessary to protect funds fully in the rule itself and suggested that sample language for trust agreements consistent with the terms and conditions within the rule be provided in the associated regulatory guide.

III. Proposed Action

The NRC is proposing to amend its regulations on decommissioning trust agreements. The proposed action would state that the trust provisions must be acceptable to the NRC and contain general terms and conditions that the NRC believes are required to ensure that funds in the trusts will be available for their intended purpose. To accomplish this objective, the NRC is proposing to modify paragraphs 10 CFR 50.75(e)(1)(i) and (ii), and to add a new paragraph,10 CFR 50.75(h) to its regulations. The changes in § 50.75(e) specify that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or an entity whose operations are regulated by a State or Federal agency. Paragraph 50.75(h) will reference the other paragraphs in § 50.75 where necessary and will discuss the terms and conditions that the NRC believes are necessary to ensure that funds in the trusts will be available for their intended purpose. As an accompaniment to this rulemaking, the NRC intends to update Regulatory Guide 1.159 to include sample trust fund language containing these terms and conditions.

IV. Discussion

The NRC believes that certain decommissioning trust language should be standardized to increase assurance of the protection of public health and safety by requiring that the decommissioning trusts: (1) Ensure that special care is taken to safeguard the trust corpus from investment risks, (2) provide adequate information concerning the trust to the NRC, and (3) provide safeguards against improper payments from the trust.

These issues are now of particular interest to the NRC because deregulation of the electric utility industry can potentially lead to several changes in the structure of ownership of nuclear power reactors that could affect reactor decommissioning trust funds. These changes include the following:

- *Relaxation or elimination of regulatory oversight by State Public Utility Commissions (PUCs) or the Federal Energy Regulatory Commission (FERC).* With utility industry deregulation, State PUCs and/or FERC may no longer have jurisdiction of the kind that they now exercise over electricity rates. Under regulation, utilities are reimbursed for their costs, including nuclear decommissioning trust fund costs, from approved rates charged ratepayers. If, under deregulation, PUCs and/or FERC no longer approve rates they will also no longer have a basis for establishing stringent accounting and financial controls. Without these controls, PUCs may determine that they have no basis for specifying terms and conditions for nuclear reactor decommissioning trust funds or for monitoring those trust funds.
- *Changes in ownership of nuclear generating facilities.* Under deregulation, vertically integrated public utilities that generate electricity, own and manage the transmission system, and sell power to the ultimate consumers may gradually become less prevalent. Instead, generating facilities may be separated (i.e., ''spun off'') within a holding company structure or sold to power-producing companies that sell electricity as a commodity to other companies that service consumers. Currently, certain energy companies that are non-utility suppliers of electricity have announced their intention to acquire nuclear power plants. After these acquisitions, State PUCs and/or FERC may no longer have jurisdiction over the energy company obtaining the reactors. NRC is required to determine the suitability of transferring reactor licenses from the former licensee to a new licensee.

To date, as part of its review of requests for license transfer in connection with the sale of nuclear power reactors, the NRC has examined whether reasonable assurance of decommissioning funding will continue to be provided. As a result, the NRC is proposing to both codify existing practice and consider enhancements to trust agreements to strengthen these

agreements in the future environment of deregulation. As a condition for NRC approval, the NRC has required certain clauses (some that parallel criteria in Regulatory Guide 1.159 and others that parallel FERC requirements) to be included in decommissioning trust funds. The NRC has essentially been using these evaluative tests in its review of decommissioning trusts in license transfers involving an unregulated license. In view of deregulation, the NRC believes that these tests are also appropriate for evaluating the trust agreements of all NRC power reactor licensees.

This section of the notice presents a set of evaluative tests for assessing whether particular terms and conditions for decommissioning trust funds will help meet NRC's goals of providing ''reasonable assurance that adequate funds are available,'' and that lack of funds will not result in delays in decommissioning creating public health and safety problems.

The following tests do not address the amount of funds in the decommissioning trust, a topic that NRC dealt with in its 1998 rule (63 FR 50465). However, the tests address how to assess the certainty that assured funds will be available. The tests were obtained by reviewing existing requirements of the NRC, the Internal Revenue Service, FERC, and several States that currently apply to decommissioning trusts, as well as non-binding recommendations created by those agencies for those trusts.

Certainty can be evaluated under several basic tests:

Test (1) Is the trust fund valid and enforceable?

The trust instrument should be required to include information that helps to ensure and to demonstrate its validity. A requirement that the instrument be valid under State law, while helpful, does not identify any features of the trust that demonstrate its validity. The trust must be in writing and include the names and signatures of the parties entering into the agreement; their titles; the dates of signing (and the effective date, if different); notarization of the signatures; a description of the basic agreement being entered into; and an affirmative statement that the trustee accepts the appointment.

An important measure of the enforceability of the trust is whether the trustee is clearly able to remain financially solvent and capable of providing the necessary services over the period that the trust is in effect. Factors that address the trustee's reliability include requirements that the trustee be qualified or licensed, and demonstrate that it has a particular level of financial backing. The financial condition of an institutional trustee may be addressed in licensing of the trustee through requirements for specified levels of operating capital or reserves.

Test (2) Do the terms of the instrument ensure that funds can be used only for certain key activities—reactor decommissioning and specified administrative costs of the trust—rather than a broad range of potentially conflicting uses?

This test is to ensure that the trust contains provisions that use of the decommissioning trust funds is reserved for decommissioning and routine and minor administrative expenses.

Test (3) Is the trust protected against events, such as amendment or cancellation, that could lessen NRC's ability to direct the use of necessary funds in a timely manner?

To address this particular problem, the following features of the trust are very important. The trust should contain provisions describing procedures for its amendment and cancellation. NRC approval should be required for both these actions when amendment or cancellation could materially affect timely access to decommissioning funds. Because disagreements over interpretation of the trust could delay payment, the trust should contain rules of interpretation that specify how disagreements should be resolved. Payment should occur upon the happening of triggering events, even if differences of opinion about the trust have not been resolved.

Test (4) Do the terms of the trust ensure that NRC will receive timely notice of all important information concerning the trust?

Trustees generally prepare annual reports and accounting summaries indicating the sums on hand, investment results, taxes due, and payments into the trust. These reports can be supplied to NRC, upon request, if NRC determines that it has a need for the information. In general, however, NRC determined in its rulemaking in 1998 that biennial reports of any material changes in the trust, plus information on the status of funds in the trust, were sufficient to monitor the trust funds. Thus, no changes to the current frequency of reporting requirements are being proposed.

Test (5) Do the terms of the trust place appropriate limits on the investments that the trustee may make?

This is typically accomplished by specifying allowed or disallowed investments and by defining a ''prudent'' investment. If the NRC relies upon a ''prudent investment'' standard adopted by investment specialists (e.g., the Third Restatement of Trusts) it will need to track how that standard is being interpreted in practice. In the past, standards for the definition of prudent investments have evolved over time. For example, increasing use of diversified investment portfolios led to changing standards about whether each investment in a portfolio, rather than the portfolio as a whole, needed to be prudent. Similarly, increasing use of mutual funds led to relaxation of the prohibition on delegation of investment decisions by a trustee to a fund manager. Because of these and other evolving changes to the then-existing ''prudent man'' rule, the American Law Institute adopted a new ''prudent investor'' rule in the Restatement of the Law Third, Trusts in 1992 (Third Restatement). In addition, the National Conference of Commissioners on Uniform State Laws promulgated a Uniform Prudent Investor Act in 1994, and numerous States have since adopted the entire Act or amended their State laws to reflect it. However, the rule cannot be said to be completely uniform across the country, and continued evolution can be expected.[1]

In view of the above tests, the NRC believes that assurance can be enhanced by specifying in 10 CFR 50.75 essential terms and conditions of the decommissioning trusts that address the following topics:

—The trust must be an external trust fund held in the United States, established pursuant to a written agreement and with an entity that is any appropriate State or Federal government agency or whose operations are regulated by a State or Federal agency.

—The trust agreement must provide that trust investments are prohibited in securities or other obligations of the reactor owner or its affiliates, successors, or assigns.

—The trust agreement must provide that trust investments are prohibited in any entity owning one or more nuclear power plants, except for investments tied to general market indices or non-nuclear sector mutual funds.

[1] See Train, J. and Wolfe, T., *Investing and Managing Trusts under the New Prudent Investor Rule,* Harvard Business School Press, 1999.

—The trust agreement must provide that the agreement cannot be amended in any material respect without 30-days prior written notification to the NRC, and there is no objection from the NRC within the notice period.
—The trust agreement must provide that the trustee, investment advisor, or anyone else directing investments made by the trust should adhere to a ''prudent investor'' standard.
—The trust agreement must provide that no disbursements or payments from the trust may be made by the trustee, other than for payment of ordinary administrative expenses (examples of ordinary administrative expenses are set out in the Internal Revenue Code Section 468A), until the trustee has first given the NRC 30-days prior written notice, and that no disbursements or payments from the trust may be made if the trustee receives written notice of objection from the NRC within the notice period.
—The person directing the investment of the funds is prohibited from engaging the licensee or its affiliates or subsidiaries as investment manager for the funds or from accepting day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries.

The NRC currently does not include an extensive set of prescriptive requirements in its regulations for the terms and conditions of reactor decommissioning trusts. Rather, the NRC requires only that the funds be segregated from the licensee's assets and outside the licensee's administrative control. A trust fund used to accomplish these purposes must be acceptable to the NRC. This overall approach gives licensees great flexibility in how they set up a decommissioning trust fund, but it provides little guidance to them concerning what trust provisions NRC will find acceptable. NRC's Standard Review Plan NUREG–1577, Rev. 1 contains references to recent regulatory amendments, as well as useful explanations of certain key regulatory terms, that are not found in the older Regulatory Guide 1.159. However, Regulatory Guide 1.159 contains a model trust that provides an example of the trust terms that NRC finds acceptable. As a result, Regulatory Guide 1.159 is being expanded and updated. The NRC is seeking public comment on the draft revised regulatory guide. Comments may be submitted as indicated under the **ADDRESSES** heading.

An alternative approach would be for the NRC to specify the precise wording of the trust provisions in its regulations. The NRC does not believe it would be either feasible or desirable to change its overall approach by specifying mandatory wording in regulations for the entire decommissioning trust fund. Based on the wide variety of trust instruments that are currently in use for decommissioning trust funds, it appears that, at a minimum, several of these trust fund templates would be needed (e.g., a model master trust fund agreement; a model for a qualified fund under Internal Revenue Code Section 468A; and a model for a non-qualified fund). Substantial time and considerable costs, both to licensees and to the NRC, would be necessary to fit the disparate trust instruments currently in use into any templates established by NRC. In addition, the requirements in 10 CFR 50.75 would become more prescriptive.

With respect to the issuance of DG–1106, ''Proposed Revision 1 of Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors,'' the NRC:

—Incorporates material from NUREG–1577, Rev. 1, ''Standard Review Plan on Power Reactor Licensee Financial Qualification and Decommissioning Financial Assurance'' that provides criteria for determining the meaning of the terms ''acceptable to NRC,'' ''under the administrative control of the licensee,'' and other terms used in the pertinent regulations that are currently not defined in the regulatory guide.
—Develops a list of trust provisions, based on the model trust language contained in Regulatory Guide 1.159 that identifies key provisions in the model language that currently are not described in the text of the regulatory guide. The NRC has also provided explanations of these provisions.
—Provides explanations or definitions of other terms and conditions such as ''subsidiaries,'' '' affiliates,'' ''successors,'' ''assigns,'' and similar terms. In addition, an explanation is provided of the types of investments tied to market indices or non-nuclear mutual funds that will be acceptable.
—Provides explanation of what is likely to constitute a ''material'' change or amendment to the trust instrument.
—Provides explanations of certain concepts that are currently ambiguous. For example, the current regulatory guide suggests that licensees ''should'' ensure that trust funds meet certain requirements, such as effectiveness under pertinent State trust law. This may be confusing to licensees who believe that trusts must be legally effective.
—Explains the intent and effect of cross references to other sources of authority, such as Internal Revenue Service, FERC, and State requirements. In some cases, the current regulatory guide suggests that trust funds that meet the requirements of these other sources of authority will be acceptable to NRC. The revised guidance explains that compliance with these other sources of authority will be acceptable, within the scope of the topic that they address (e.g., investment criteria or amount of annual payment into the trust fund), but are not measures of the overall acceptability of the trust instrument to NRC. In some cases, compliance with these requirements will not be sufficient, by itself, to constitute acceptability to the NRC.
—Provides a clear and consistent description of the investment guidelines pertinent to decommissioning trust funds. Current references in the regulatory guide to State law, FERC requirements, and other standards appear to create some ambiguity concerning the precise limits of the investment guidelines and what they include.
—Revises the Sample Parent Guarantee to eliminate NRC as a direct beneficiary within the guarantee. This modification reflects current NRC practice.

Section-by-Section Analysis

Section 50.75(e)

This subsection would be amended by the addition of a sentence to both paragraphs 50.75(e)(1)(i), which deals with the prepayment method of financial assurance, and 50.75(e)(1)(ii), which deals with the external sinking fund method of financial assurance. The sentences would call for the trust to be an external trust fund held in the United States, established pursuant to a written agreement with an entity that is a State or Federal government agency or whose operations are regulated by a State of Federal agency. These amendments would be used by the NRC staff in evaluating the first test addressed in the Discussion Section relating to trust agreement validity and enforceability.

Section 50.75(h)

This is a new subsection which would implement the following conditions. The trust agreement must prohibit trust investments in securities or other obligations of the reactor owner or its affiliates, successors, or assigns. The trust agreement must prohibit investments in any entity owning one or more nuclear power plants. This is

proposed to address the concerns raised in Test 5 relating to the appropriate limits on investments. The investment may, however, be tied to general market indices or non-nuclear sector mutual funds. The trust agreement must stipulate that the agreement cannot be amended in any material respect without 30-days prior written notice to the NRC, and that no amendment to the trust may be made if the trustee receives written notice of objection from the NRC within that notice period. This is being proposed to address the lessening of NRC's ability to direct the use of necessary funds in a timely manner as discussed in Test 3. The trust agreement must stipulate that the trustee, investment advisor, or anyone else directing investments made by the trust should adhere to a ''prudent investor'' standard. The trust agreement must provide that no disbursements or payments from the trust (other than payment of ordinary administrative expenses) may be made by the trustee until the trustee has first given the NRC 30-days prior written notice, and that no disbursements or payments from the trust may be made if the trustee receives written notice of objection from the NRC within that notice period. This would ensure that the funds can be used only for certain key activities as identified in Test 2. The person directing the investment of the funds may not use the licensee or its affiliates or subsidiaries as the investment manager for the funds or accept day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries.

V. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The basis for this determination reads as follows: This action is being proposed to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds would be available for their intended purpose. Because of deregulation within the electric power generation industry, the NRC will need to take increased responsibility to oversee decommissioning trust funds as State Public Utility Corporations may no longer oversee these funds.

This revision to the NRC's regulations would provide licensees with a codification of requirements and guidance that will specify more fully the provisions of the decommissioning trust agreements. The proposed rule would state that the trust provisions must be acceptable to the NRC and would contain general objectives and criteria that the NRC believes are required to ensure that funds in the trusts would be available for their intended purpose. These proposed changes would not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[2] Therefore, promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC. The NRC is not aware of any other documents related to the environmental impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

The determination of this environmental assessment is that there would be no significant offsite impact to the public from this action. However, the general public should note that the NRC welcomes public participation. The NRC has also committed to complying with Executive Order (EO) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, in all its actions. Therefore, the NRC has also determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public thinks may be related to this proposed rule but somehow were not addressed. The NRC uses the following working definition of ''environmental justice:'' the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Comments on any aspect of the environmental assessment, including environmental justice, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

VI. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paper Work Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for this information collection is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–1202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by June 29, 2001. Comments received after this date will be considered if it is practical to do so,

[2] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20555–0001. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service (NTIS) by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

but assurance of consideration cannot be given to comments received after this date.

VII. Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Single copies of the analysis may be obtained from Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail *bjr@nrc.gov.*

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

IX. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing, operation, and decommissioning of nuclear power plants. The companies that own these plants do not fall in the scope of the definition of ''small entities'' set forth in the NRC's size standards (10 CFR 2.810).

X. Backfit Analysis

The Regulatory Analysis for the proposed rule also constitutes the documentation for the evaluation of backfit requirements, and no separate backfit analysis has been prepared. As defined in 10 CFR 50.109, the backfit rule applies to—

* * * modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position. * * *

The proposed amendments to NRC's requirements for decommissioning trust provisions of nuclear power plants would require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Also, as nuclear power reactors have been sold, NRC has stipulated, in connection with license transfers, that certain terms and conditions be added to decommissioning trust funds. These sales may involve transfers of nuclear power reactors from regulated public utilities to firms that are not regulated as public utilities. Because rate regulators may, as a consequence of utility deregulation, cease to exercise direct oversight over decommissioning trusts, the Commission directed the NRC staff to initiate a rulemaking to require that decommissioning trust agreements are in a form acceptable to the NRC.

Although some of the changes to the regulations are reporting requirements, that are not covered by the backfit rule, other elements in the changes are considered backfits because they would modify, supplement, or clarify the regulations with respect to: (1) The fact that the NRC will need to exercise greater oversight of decommissioning trust funds as State Public Utility Commissions reduce their oversight as a result of deregulation within the electric power generation industry, and (2) the NRC exercising more oversight of decommissioning trusts in evaluating license transfer applications. The NRC has concluded on the basis of the documented evaluation required by 10 CFR 50.109(4)(a)(4) and set forth in the regulatory analysis, that the new or modified requirements are necessary to ensure that nuclear power reactor licensees provide for adequate protection of the public health and safety in the face of a changing competitive and regulatory environment not envisioned when the reactor decommissioning funding regulations were promulgated and that the changes to the regulations are in accord with the common defense and security. Therefore, the NRC has determined to treat this action as an adequate protection backfit under 10 CFR 50.109(a)(4)(ii). Consequently, a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3) do not apply. Further, these changes to the regulations are required to satisfy 10 CFR 50.109(a)(5).

XI. National Technology and Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no consensus standards regarding the reporting of status of decommissioning trust funds because of revised trust agreements of nuclear power plant licensees nor relating to license transfers that would apply to the requirements imposed by this rule. Thus, the provisions of this Act do not apply to this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also

issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.75, the introductory text of paragraph (e)(1), paragraph (e)(1)(i), and the introductory text of paragraph (e)(1)(ii) would be revised, and a new paragraph (h) would be added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e)(1) Financial assurance is to be provided by the following methods.

(i) *Prepayment.* Prepayment is the deposit made preceding the start of operation into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. Prepayment may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities or other payment acceptable to the NRC. Such trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment shall be established pursuant to a written agreement and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency or an entity whose operations relating to the prepayment deposit are regulated and examined by a Federal or State agency. A licensee may take credit for projected earnings on the prepaid decommissioning trust funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination, if the licensee's rate-setting authority does not authorize the use of another rate. However, actual earnings on existing funds may be used to calculate future funds needs.

(ii) *External sinking fund.* An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment acceptable to the NRC. Such trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment shall be established pursuant to a written agreement and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency or an entity whose operations relating to the external sinking fund are regulated and examined by a Federal or State agency. A licensee may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period. This includes the periods of safe storage, final dismantlement, and license termination, if the licensee's rate-setting authority does not authorize the use of another rate. However, actual earnings on existing funds may be used to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of such costs, may make use of this method only for that portion of such costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

* * * * *

(h)(1) Licensees using prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the trust, escrow account, government fund, or other account used to segregate and manage the funds that—

(i) The trustee, manager, investment advisor, or other person directing investment of the funds:

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of the power reactor or their affiliates, subsidiaries, successors or assignees, or in securities of any other entity owning one or more nuclear power plants, except for investments tied to market indices or non-nuclear sector mutual funds;

(B) Is obligated to ensure that all investments are rated at least ''investment grade'' or equivalent;

(C) Is obligated at all times to adhere to a prudent investor standard in investing the funds; and

(D) Is prohibited from engaging the licensee or its affiliates or subsidiaries as investment manager for the funds or from accepting day-to-day management direction of the funds' investments or direction on individual investments by the funds from the licensee or its affiliates or subsidiaries.

(ii) The trust, escrow account, Government fund, or other account used to segregate and manage the funds may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30-days prior to the proposed effective date of the amendment. The licensee shall provide the text of the proposed amendment and a statement of the reason for the proposed amendment. The trust, escrow account, Government fund, or other account may not be amended if the person responsible for managing the trust, escrow account, Government fund, or other account receives written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period; and

(iii) No disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative expenses, until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30-days prior to the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30-day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, are restricted to ordinary administrative expenses, decommissioning expenses, or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed.

(2) Licensees using a surety method, insurance, or other guarantee method to provide financial assurance shall provide that the trust established for decommissioning costs to which the surety or insurance is payable contains in its terms the requirements in paragraphs (h)(1)(i), (ii) and (iii) of this section.

Dated at Rockville, Maryland, this 23rd day of May, 2001.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–13489 Filed 5–29–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 51, 61, 70, 72, 73, 74, 75, 76, and 150

RIN AG69

Material Control and Accounting Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its material control and accounting (MC&A) regulations. The reporting requirements for submitting Material Balance Reports and Inventory Composition Reports are being revised to change both the frequency and timing of the reports. The categorical exclusion for approving safeguards plans is being revised to specifically include approval of amendments to safeguards plans. The MC&A requirements for Category II facilities are being revised to be more risk informed. The proposed amendments are intended to reduce unnecessary burden on licensees and the NRC without adversely affecting public health and safety.

DATES: The comment period expires August 13, 2001. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC's Public Document Room (PDR), 11555 Rockville Pike, Room O–1F21, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail mlh1@nrc.gov, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

The Commission proposes to amend an aspect of the MC&A requirements so as to reduce unnecessary regulatory burden and to provide additional flexibility to a licensee required to submit Material Balance Reports and Inventory Composition Reports (also called Physical Inventory Listing report). The current regulations require these reports to be compiled as of March 31 and September 30 of each year and submitted within 30 days after the end of the period covered by the report. These twice yearly reports are typically based on book values as opposed to physical inventory results because the dates do not always coincide with the time frame for a facility's physical inventory. Physical inventories for Category III facilities are conducted on an annual basis, semiannually for Category I facilities, and every 2 to 6 months for Category II facilities. The term Material Status Reports refers to both the Material Balance Reports and the Inventory Composition Reports and is used in Part 75.

A Category I licensee is one that is licensed to possess and use formula quantities of strategic special nuclear material (SSNM) (e.g., 5 kilograms of uranium enriched to 20 percent or more in the uranium-235 isotope). SSNM means uranium-235 (contained in uranium enriched to 20 percent or more in the uranium-235 isotope), uranium-233, or plutonium. There are currently two licensed Category I facilities. A Category II licensee is one that is licensed to possess and use greater than one effective kilogram of special nuclear material (SNM) of moderate strategic significance (e.g., uranium enriched to more than 10 percent but less than 20 percent in the uranium-235 isotope, with limited quantities at higher enrichments). Currently, there is only one licensed Category II facility, General Atomics, and it has a possession-only license and is undergoing decommissioning. General Atomics would not be required to make changes to meet the new requirements. There are no operating Category II licensed facilities. A Category III licensee is one that is licensed to possess and use quantities of SNM of low strategic significance (e.g., uranium enriched to less than 10 percent in the uranium-235 isotope, with limited quantities at higher enrichments). See Table 1 for more specific information on possession limits for Category I, II, and III licensees.

TABLE 1.—CATEGORIZATION OF MATERIAL

Material	Form	Category I	Category II	Category III
Plutonium	Unirradiated	2 kg or more	Less than 2 kg but more than 500 g.	500 g or less.
Uranium-235	Unirradiated:			
	Uranium enriched to 20 percent U–235 or more.	5 kg or more	Less than 5 kg but more than 1 kg.	1 Kg or less.
	Uranium enriched to 10 percent U–235 but less than 20 percent.		10 kg or more	Less than 10 kg.

TABLE 1.—CATEGORIZATION OF MATERIAL—Continued

Material	Form	Category I	Category II	Category III
	Uranium enrich above natural, but less than 10 percent U–235.	.....	.....	10 kg or more.
Uranium-233	Urirradiated	2 kg or more	Less than 2 kg but more than 500 g.	500 g or less

In 1982, the NRC initiated an effort to move the MC&A requirements from 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,'' to 10 CFR Part 74, ''Material Control and Accounting of Special Nuclear Material.'' The initiative also included efforts to make the requirements more performance oriented. In 1985, the MC&A requirements for Category III facilities were made more performance oriented and moved to Part 74 (50 FR 7575; February 25, 1985). The requirements for Category I facilities were similarly moved in 1987 (52 FR 10033; March 30, 1987). The MC&A requirements for Category II facilities and the general MC&A requirements are still interspersed among the safety and general licensing requirements of Part 70. The requirements regarding Category II material are also overly prescriptive.

In addition, part 74 includes several typographical errors, old implementation dates, and some terminology that should be updated to reflect current practice and to be consistent with the regulatory guides.

Finally, the currently effective categorical exclusion for approval of safeguards plans does not clearly include the approval of an amendment to a safeguards plan.

Discussion

Material Status Reports

A licensee authorized to possess SNM at any one time or location in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, must complete and submit in a computer-readable format a Material Balance Report concerning SNM received, produced, possessed, transferred, consumed, disposed of, or lost. A Material Balance Report is a summary of nuclear material changes from one inventory period to the next. This report must be compiled as of March 31 and September 30 of each year and filed within 30 days after the end of the period. Under §§ 76.113, 76.115, and 76.117, the gaseous diffusion plants (certificate holders) are also required to submit the report twice yearly on the same schedule. (Note that the term ''licensee'', as it is used within this statement of considerations, includes the gaseous diffusion plants unless otherwise stated.) Each licensee is also required to file a statement of the composition of the ending inventory with the Material Balance Report. An Inventory Composition Report is a report of the actual inventory listed by specified forms of material (e.g., irradiated versus unirradiated fuel at power reactors). However, a licensee required to submit a Material Status Report under § 75.35 is directed to submit this report only in accordance with the provisions of that section (i.e., at the time of a physical inventory). Section 75.35 applies only to those facilities that have been selected to report under the Agreement Between the United States and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States. For those facilities reporting under part 75, the frequency of reporting is dependent on the frequency of the physical inventory, which is dependent on the Category of facility (i.e., Category I, II, or III). The report would be required either once (Category III) or twice (Category I and II) per year.

The principal purpose of the Material Status Report is the periodic reconciliation of licensee records with the records in the Nuclear Materials Management and Safeguards System (NMMSS). The NMMSS is the national database for tracking source and SNM. The data from the NMMSS are then used to satisfy the requirement of the US/IAEA Safeguards Agreement to provide the annual Material Balance Report for facilities selected under the Agreement or associated Protocol.

The proposed rule would modify the regulations to require the Material Balance Report and the Physical Inventory Listing Report at the time of a physical inventory as is currently stated in § 75.35. The proposed rule would require the reports to be completed within 60 days of the beginning of the physical inventory for independent spent fuel storage installations, reactors, and Category II and III facilities, and within 45 days of the beginning of the physical inventory for Category I facilities. This modification would not affect licensees reporting under Part 75. Because most facilities are only required to conduct a physical inventory once a year, the reporting frequency would be reduced from twice a year to once a year. For most licensees, reconciliation once a year instead of twice a year would not appear to be a problem because the number of transactions is such that reconciliation would be manageable. For the gaseous diffusion plants that have a significantly larger number of transactions, reconciliation could be more difficult if performed once a year. However, the gaseous diffusion plants, by practice, currently reconcile their records with the NMMSS on a bimonthly basis and could continue this practice.

As indicated, a licensee is required to submit the semiannual Material Balance Report and Inventory Composition Report within 30 days of March 31 and September 30 of each year. The preestablished timing of the submittal has two drawbacks. Specifically, the reports rarely coincide with a physical inventory and all of the reports for a given period are provided to the NMMSS at the same time. The data from a physical inventory is significantly more meaningful than the book values reported during the interim periods. Staggering the submittals would benefit the NMMSS contractor because not all licensees conduct inventories at the same time. Requirements for the NMMSS contractor would likely be spread more evenly throughout the year. Modifying the requirement to stipulate that the Material Balance Report and the Inventory Composition Report shall be submitted at the time of the physical inventory could alleviate these problems and provide more meaningful data.

Another consideration is whether there would be an adverse impact on meeting IAEA safeguards requirements. Only one Material Status Report is required per year, pursuant to the terms of the US/IAEA Safeguards Agreement and § 75.35. Consequently, there would be no adverse impact on meeting IAEA safeguards requirements.

The proposed rule would revise the timing to complete the Material Balance

Report and Physical Inventory Listing Report to coincide with a facility's physical inventory. The proposed rule would also provide additional time to complete the paperwork, except for those licensees reporting under Part 75. These changes would provide most licensees with additional flexibility and reduce the regulatory burden. The proposed rule would use Physical Inventory Listing Report instead of Inventory Composition Reports to be consistent with the name of the actual form (DOE/NRC Form 742C).

Categorical Exclusion

The categorical exclusion (§ 51.22(c)(12)) covers the issuance of an amendment to a license pursuant to 10 CFR parts 50, 60, 61, 70, 72, or 75, relating to safeguards matters or approval of a safeguards plan. It does not address amendments to those plans. As written, the categorical exclusion could be used for approval of a safeguards plan. However, an environmental assessment (EA) would be necessary for approval of an amendment to the safeguards plan. Initial approval is covered by the categorical exclusion, but amendments do not appear to be covered. This inconsistency appears to be inadvertent. Adding language covering revisions to safeguards plans would rectify this omission. In addition, the categorical exclusion currently lists several parts. Providing a generic reference to any part of 10 CFR Chapter I would correct the current listing and avoid the need for changes due to new parts being added.

General and Category II MC&A Requirements

In 1982, the NRC began an effort to move the MC&A requirements from part 70 to part 74 and make the requirements more performance oriented. Subsequent rulemakings on February 25, 1985 (50 FR 7575) and March 30, 1987 (52 FR 10033), moved the requirements for Category I and III facilities. The MC&A requirements for Category II facilities and the general MC&A requirements are currently interspersed among the safety and general licensing requirements of part 70. The requirements regarding Category II material are also overly prescriptive as they contain some requirements that are more stringent than the requirements for Category I facilities. The proposed rule represents the final stage and would result in the movement of the remaining general MC&A requirements and the requirements for Category II facilities from part 70 to part 74. The proposed rule would also make the MC&A requirements for the Category II facilities more risk informed. The proposed risk-informed approach for the Category II facilities is consistent with the current MC&A regulations that apply to Category I and III facilities. In addition, the proposed rule would make needed modifications that were missed in earlier updates of the MC&A regulations, correct typographical errors, delete old implementation dates, clarify some definitions, and include several new definitions.

Specifically, the proposed rule would clarify the definitions for ''Category IA material'' and ''inventory differences'' and make them consistent with the current regulatory guides. The terms ''beginning inventory,'' ''plant,'' ''removals from inventory,'' and ''removals from process,'' would be newly defined. The definition for ''removals'' would be deleted. There has been some confusion by licensees over the term ''removals.'' The term ''removals'' would be replaced by the terms ''removals from process'' and ''removals from inventory.'' The definitions being proposed are consistent with the current regulatory guides. In addition, both the terms ''beginning inventory'' and ''plant'' are used in the current rule language, but were never defined in the rule. The definitions being proposed are consistent with the definitions contained in the current regulatory guides. The changes to the Category II requirements are discussed below.

General Requirements

The current general MC&A requirements in part 70 require a licensee to keep records showing the receipt, inventory, disposal, and transfer of all SNM and specifies the retention period for those records. These recordkeeping requirements are not being changed. The general requirements currently in §§ 70.51(b)(1) through (b)(5) would be captured in new §§ 74.19 (a)(1) through (a)(4). The reporting requirements currently in § 70.52 requiring a licensee to report loss or theft of SNM remain unchanged and would be covered by § 74.11. The requirements for a Nuclear Material Transfer Report in § 70.54 would remain unchanged and be captured by § 74.15. The existing requirement in § 70.51(d) for all licensees authorized to possess more than 350 grams of contained SNM to conduct an annual physical inventory of all SNM would be retained and be moved to new § 74.19(c). The requirement currently in § 70.51(c) for all licensees authorized to possess SNM in a quantity exceeding one effective kilogram of SNM to establish, maintain, and follow written MC&A procedures that are sufficient to enable the licensee to account for the SNM, would be located in new § 74.19(b). The requirements in § 70.53 would be located in §§ 74.13 and 74.17.

Category II Requirements

Current domestic MC&A regulations in part 70 for licensees who possess greater than one effective kilogram of strategic special nuclear material in irradiated fuel reprocessing operations or moderate strategic special nuclear material have been interspersed among the safety and general licensing requirements in part 70. These MC&A requirements are being moved to Part 74 to avoid confusion with the safety requirements in part 70, to allow the requirements to be presented in a more orderly manner, and to make them more risk informed. Emphasis has been given to performance requirements rather than prescriptive requirements to allow licensees to select the most cost-effective way to satisfy NRC requirements.

The basic MC&A requirements for Category II facilities are being retained in Part 74 but are presented in a more organized manner. The performance objectives being proposed for Category II facilities are: (1) Confirmation of the presence and location of SNM; (2) prompt investigation and resolution of any anomalies indicating a possible loss of SNM; (3) rapid determination of whether an actual loss of a significant quantity of SNM has occurred; and (4) timely generation of information to aid in the investigation and recovery of missing SNM in the event of an actual loss. Implementation of these objectives is commensurate with the amount and type of material. The principal differences between the MC&A requirements in this proposed rule and those in the current regulations are:

(1) The proposed rule would reduce the required frequencies of Category II physical inventories from the current frequency of 2 months for SSNM and 6 months for everything else to 9 months. From a safeguards risk and graded approach perspective, this would be consistent with the annual frequency for Category III facilities and semiannual frequency for Category I facilities;

(2) The concept of Inventory Difference (ID) and Standard Error of the Inventory Difference (SEID) would be used to replace the Material Unaccounted For (MUF) concept in the statistical program. This would be consistent with the statistical terms and methods used in Part 74 for Category I and III facilities and with NRC guidance and reference documents;

(3) The proposed significance testing of ID with a three SEID limit would be less restrictive than the current test level of two SEID specified in § 70.51(e)(5). This would be consistent with Category I facilities that use a three-SEID limit with a constraint on SEID of 0.10 percent of active inventory. The measurement quality constraint for Category II would remain at 0.125 percent of active inventory for SEID. This change would result in a reduction of unwarranted, disruptive, and costly investigations, reports, or responses to ID threshold actions;

(4) An item control program for Category II facilities that is consistent with Category III facilities is proposed. Category II item control requirements would be less costly than the more stringent Category I item monitoring. The item control requirements mainly consist of providing current knowledge of location, identity, and quantity of plant-wide items existing for at least 14 days. The performance-based program allows a licensee to propose its item control method and frequency;

(5) The combined standard error concept and a de minimus quantity for plutonium and uranium in the evaluation of shipper-receiver differences would be used. This is consistent with the requirements for Category I and III facilities in Part 74; and

(6) The required frequency for the independent review and assessment of the facility's MC&A program would be changed from annual to a minimum of 18 months. From a safeguards risk and graded approach perspective, this compares to the annual requirement for Category I and the every two year requirement for Category III.

The consolidation of regulations would complete NRC's regulatory reform goal of providing a graded approach to MC&A regulation. It would also reduce the regulatory burden by making it easier for a licensee to find the MC&A requirements that apply to its facility.

Section-by Section Discussion of Proposed Amendments

This proposed rule would make several changes to Parts 51, 61, 70, 72, 73, 74, 75, 76, and 150, which are characterized as follows: The timing and frequency for submitting Material Balance Reports and Inventory Composition Reports in Parts 72 and 74 would be amended. The remaining MC&A requirements in Part 70 would be moved to Part 74. The MC&A requirements for Category II facilities would be made more risk informed. Part 51 would be amended to clarify that the categorical exclusion for safeguards plans would also apply to amendments to the safeguards plan. Conforming changes would be made to Parts 61, 70, 73, 75, 76, and 150 to reflect the relocation of the MC&A requirements.

Section 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review

This section would be revised to clarify that the categorical exclusion used for issuance of an approval of a safeguards plan can also be used for issuance of an approval for an amendment to the safeguards plan. Additionally, the listing of Parts 50, 60, 61, 70, 72, or 75 would be changed to a more generic reference to 10 CFR Chapter I. This change would avoid an incomplete listing (e.g., Part 76 was inadvertently left out).

Section 61.80 Maintenance of Records, Reports, and Transfers

This section would be revised to delete the reference to §§ 70.53 and 70.54, and add the new reference to §§ 74.13 and 74.15.

Section 70.8 Information Collection Requirements: OMB Approval

This section would be revised to change the OMB information collection requirements to reflect the sections being deleted from Part 70.

Section 70.19 General License for Calibration or Reference Sources

This section would be revised to delete the reference to §§ 70.51 and 70.52, and add the new reference to §§ 74.11 and 74.19.

Section 70.20a General License to Possess Special Nuclear Material for Transport

This section would be revised to include a reference to § 74.11.

Section 70.22 Contents of Applications

This section would be revised to delete the reference to § 70.58 and add the new reference to § 74.41.

Section 70.23 Requirements for the Approval of Applications

This section would be revised to correct a reference from a nonexistent section to the correct section.

Section 70.32 Conditions of Licenses

This section would be revised to reflect the transfer of the MC&A requirements from part 70 to part 74, to correct an error in wording, and to clarify that changes to a licensee's MC&A program that represent a decrease in effectiveness must be made via an amendment application pursuant to § 70.34, consistent with current licensing policy.

Section 70.51 Material Balance, Inventory, and Records Requirements

This section would be revised to rename the section and delete the MC&A requirements because they would be replaced by the requirements in part 74. Paragraphs (b)(6), (b)(7), (i)(1), and (i)(2) would be redesignated as paragraphs (a), (b), (c)(1), and (c)(2) respectively.

Section 70.52 Reports of Accidental Criticality or Loss or Theft or Attempted Theft of Special Nuclear Material

This section would be renamed to reflect the relocation of the reporting of theft or loss of SNM. The section would be revised to delete paragraphs (b) and (d) because they would be covered by the requirements found in § 74.11. The remaining paragraphs would be redesignated. Paragraph (a) and new paragraph (b) would be revised to remove the loss of SNM.

Section 70.53 Material Status Reports

This section would be deleted in its entirety, the requirements in this section would be covered by the requirements found in §§ 74.13 and 74.17.

Section 70.54 Nuclear Material Transfer Reports

This section would be deleted in its entirety. The requirements in this section would be covered by the requirements found in § 74.15.

Section 70.57 Measurement Control Program for Special Nuclear Materials Control and Accounting

This section would be deleted in its entirety. The requirements in this section would be replaced by the requirements found in Part 74, Subpart D.

Section 70.58 Fundamental Nuclear Material Controls

This section would be deleted in its entirety. The requirements in this section would be replaced by the requirements found in Part 74, Subpart D.

Section 72.76 Material Status Reports

This section would be revised to change the timing of the submittal of the Material Status Reports from every March 30 and September 30 to within 60 calendar days of the beginning of the physical inventory. The language would be revised to reflect the wording in

§ 74.13 to avoid any confusion over the term ''Material Status Reports.'' The language would clearly state that both the Material Balance Report and the Physical Inventory Listing Report are to be submitted.

Section 73.67 Licensee Fixed Site and in-Transit Requirements for the Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance

This section would be revised to delete the reference to § 70.54 and add a new reference to § 74.15.

Section 74.1 Purpose

This section would be revised to reflect the addition to part 74 of the general MC&A requirements and the requirements for SNM of moderate strategic significance. The reference to §§ 70.51, 70.57, and 70.58 would be deleted.

Section 74.2 Scope

This section would be revised to reflect the relocation of the general reporting and recordkeeping requirements, and exempt part 72 licensees from the general reporting and recordkeeping requirements, as they are currently covered under the part 72 requirements.

Section 74.4 Definitions

This section would be revised to clarify the definitions for ''Category IA material'' and ''inventory differences.'' The terms ''beginning inventory,'' ''plant,'' ''removals from inventory,'' and ''removals from process'' would be newly defined. The definition for ''removals'' would be deleted. There has been some confusion by licensees over the term ''removals.'' The term ''removals'' would be replaced by the terms ''removals from process'' and ''removals from inventory.'' The definitions being proposed are consistent with the current regulatory guides. In addition, both the terms ''beginning inventory'' and ''plant'' are used in the current rule language, but were never defined in the regulations. The definitions being proposed are consistent with the definitions contained in the current regulatory guides.

Section 74.8 Information Collection Requirements: OMB Approvals

This section would be revised to change the OMB collection requirements to reflect the relocation of provisions from part 70.

Section 74.13 Material Status Reports

This section would be revised to delete paragraph (b), and redesignate paragraphs (a)(1) and (a)(2) as (a) and (b), respectively. The new paragraph (a) would be revised to require a Material Balance Report and Physical Inventory Listing Report to be submitted: (1) within 60 calendar days of the beginning of physical inventory as required in §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6); or (2) within 45 calendar days of the beginning of the physical inventories as required in § 74.59(f)(1). The original paragraph (b) would be deleted because the requirements would be replaced by the new Subpart D.

Section 74.17 Special Nuclear Material Physical Inventory Summary Report

This section would be revised to reflect the relocation of the MC&A requirements and to change the address for reporting physical inventory results in paragraph (c). The reports would be submitted to the Director, Office of Nuclear Material Safety and Safeguards, instead of the regions to be consistent with paragraphs (a) and (b).

Section 74.19 Recordkeeping

A new section would be added to address the general recordkeeping requirements for MC&A that were previously included in § 70.51. These requirements originate from §§ 70.51 (b)(1) through (b)(5), 70.51(c), and 70.51(d).

Section 74.31 Nuclear Material Control and Accounting for Special Nuclear Material of Low Strategic Significance

This section would be revised to delete implementation dates that are no longer applicable. This section would also be revised to change 9 kilograms to 9000 grams because the use of 9 kg implied that the NRC will accept a rounding to the nearest kg, when in fact the NRC requires rounding to the nearest gram.

Section 74.41 Nuclear Material Control and Accounting for Special Nuclear Material of Moderate Strategic Significance

A new section would be added to provide the general performance objectives, implementation schedule and system capabilities and requirements for special nuclear material of moderate strategic significance.

Section 74.43 Internal Controls, Inventory, and Records

A new section would be added to provide the requirements for internal controls, inventory, and recordkeeping for special nuclear material of moderate strategic significance.

Section 74.45 Measurements and Measurement Control

A new section would be added to provide the requirements for measurements and measurement control for special nuclear material of moderate strategic significance.

Section 74.51 Nuclear Material Control and Accounting for Strategic Special Nuclear Material

This section would be revised to delete paragraphs (c)(1) and (c)(2) to eliminate implementation dates that are no longer relevant. Paragraph (c) would be revised to reflect that new Fundamental Nuclear Material Control plans would be implemented upon issuance of a license or amendment, or by the date specified in a license condition. Paragraph (d)(1) would be deleted because it is no longer necessary to provide an 18-month exemption for implementation. Paragraph (d)(2) would be redesignated as paragraph (d).

Section 74.57 Alarm Resolution

This section would be revised to reflect an NRC organizational change: the ''Domestic Safeguards and Regional Oversight Branch'' and the ''Division of Safeguards and Transportation'' are no longer used as names of organizational units. Also, the stated phone number is no longer applicable. Notifications would be made to the NRC Operations Center.

Section 74.59 Quality Assurance and Accounting Requirements

This section would be revised to provide proper identification of acronyms, correct the accidental omission of the phrase ''contained in high enriched uranium,'' provide improved punctuation, correct typographical errors, and require that reports be submitted to the Director, Office of Nuclear Material Safety and Safeguards.

Section 75.21 General Requirements

This section would be revised to delete the reference to § 70.51 and add the new reference to § 74.15.

Section 76.113 Formula Quantities of Strategic Special Nuclear Material—Category I

This section would be revised to delete the reference to § 70.51 and

replace it with the new reference to § 74.19.

Section 76.115 Special Nuclear Material of Moderate Strategic Significance—Category II

This section would be revised to delete the reference to §§ 70.51, 70.52, 70.53, 70.54, 70.57, and 70.58 and add the new reference to §§ 74.19, 74.41, 74.43, and 74.45.

Section 76.117 Special Nuclear Material of Low Strategic Significance—Category III

This section would be revised to delete the reference to § 70.51 and add the new reference to § 74.19.

Section 150.20 Recognition of Agreement State Licenses

This section would be revised to delete the reference to §§ 70.51, 70.53, and 70.54 and add the new reference to §§ 74.11, 74.15, and 74.19.

Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 70, 72, and 74 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), most of this proposed rule is classified as compatibility Category ''NRC.'' However, certain parts of the proposed rule would be a matter of consistency among States and Federal safety requirements. The revisions to part 61 and §§ 70.51(a), 70.51(b), 70.19(c), 150.20(b), and new § 74.19(a) would be classified as Category C. A conforming change to § 70.8(b) would be classified as Category D. Although these sections are subject to various degrees of compatibility regarding the Agreement States, the proposed amendments are not expected to impact existing Agreement States regulations. The actual requirements are not changing, they are only being moved to a new location. Therefore, it is not expected that Agreement States will need to make conforming changes to their regulations.

Category C means the provisions affect a program element, the essential objectives of which should be adopted by the State to avoid conflicts, duplications, or gaps in the national program. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met. Category D means the program element does not need to be adopted by the States for purposes of compatibility. Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of 10 CFR Chapter I. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would revise the MC&A regulations. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that the changes to part 51, the changes to the reporting requirements, and the movement of the MC&A requirements now found in part 70 to part 74 are of the type of action described in categorical exclusion 10 CFR 51.22(c)(2) and (3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for these portions of the proposed regulation. An environmental assessment has been prepared for the remainder of the proposed rule.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule because the Commission has concluded based on an EA that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. The EA prepared to support this rulemaking covers the changes to the Category II requirements.

The determination of this EA is that there will be no significant impact to the public from this action. However, the general public should note that the NRC welcomes public participation. The NRC has also committed to complying with Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994, in all its actions. Therefore, the NRC has also determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. In the letter and spirit of E.O. 12898, the NRC is requesting public comment on any environmental justice considerations or questions that the public believes may be related to this proposed rule but were not addressed. The NRC uses the following working definition of ''environmental justice': The fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Comments on any aspect of the EA, including environmental justice, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the EA and this proposed rule to every State Liaison Officer and requested their comments on the EA. The EA may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD. Single copies of the EA are available from Merri Horn, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov,* Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction

Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Because the rule will reduce existing information collection requirements, the public burden for this information collection is expected to be decreased by approximately 7 hours per licensee for licensees reporting annually, instead of semiannually, on NRC Forms 742 and 742C. This reduction includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. There is essentially no change in overall burden for the requirements in 10 CFR part 70 that are being moved to 10 CFR part 74. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing this burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *BJS1@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0004, –0009, –0058, –0123, and –0132), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by June 29, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

Statement of the Problem and Objective

The Commission proposes to amend an aspect of the MC&A requirements so as to reduce the regulatory burden and to provide additional flexibility to licensees required to submit Material Balance Reports and Inventory Composition Reports. The current regulations require a licensee authorized to possess at any one time or location SNM in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, to complete and submit in a computer-readable format Material Balance Reports concerning SNM received, produced, possessed, transferred, consumed, disposed of, or lost. These reports are to be compiled as of March 31 and September 30 of each year and filed within 30 days after the end of the period. Each licensee is also required to file a statement of the composition of the ending inventory (also called the Physical Inventory Listing Report) along with the Material Balance Report. These twice yearly reports are typically based on book values as opposed to physical inventory results because the dates do not always coincide with the timeframe for a facility's physical inventory. Physical inventories for Category III facilities are conducted on an annual basis, semiannually for Category I facilities, and every 2 to 6 months for Category II facilities. By revising the timeframe to complete their Material Balance Reports and Physical Inventory Listing reports to coincide with the physical inventory and providing additional time to complete the paperwork, the regulatory burden on most licensees would be reduced.

The categorical exclusion (§ 51.22(c)(12)) covers the issuance of an amendment to a license pursuant to 10 CFR parts 50, 60, 61, 70, 72, or 75, relating to safeguards matters or approval of a safeguards plan. It does not address amendments to those plans. As written, the categorical exclusion could be used for approval of a safeguards plan. However, an EA would be necessary for approval of an amendment to the safeguards plan. Initial approval is covered by the categorical exclusion, but amendments were inadvertently omitted. This inadvertent omission would be rectified by adding language covering revisions to safeguards plans. In addition, the categorical exclusion currently lists several parts. Providing a generic reference to any part of 10 CFR chapter I would correct the current listing and avoid the need for changes due to new parts being added. These changes would enhance the NRC's efficiency and reduce potential burden on the staff.

Third, in 1982, the NRC initiated an effort to move the MC&A requirements from 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material,'' to 10 CFR part 74, ''Material Control and Accounting of Special Nuclear Material.'' The initiative also included efforts to make the requirements more performance oriented. In 1985, the MC&A requirements for Category III facilities were made more performance oriented and moved to part 74 (50 FR 7575; February 25, 1985). The requirements for Category I facilities were similarly moved in 1987 (52 FR 10033; March 30, 1987). The MC&A requirements for Category II facilities and some of the general MC&A requirements are still interspersed among the safety and general licensing requirements of part 70. The requirements regarding Category II material are also overly prescriptive, in some cases having more stringent requirements than those for a Category I facility. Although there are no current operating Category II licensed facilities (the only Category II facility has a possession only license and is undergoing decommissioning), it is still beneficial to move the requirements and make them less prescriptive. These modifications would enhance the regulatory process by providing any future Category II licensee with a better understanding of the procedures and requirements for MC&A, and would consolidate the MC&A requirements in part 74. Conforming changes would also be made to parts 61, 73, 75, 76, and 150 to reflect the relocations.

In addition, the proposed rule would correct several typos, old implementation dates, and some terminology that should be updated to reflect current practice and to be consistent with the regulatory guides.

Identification and Analysis of Alternative Approaches to the Problem

Option 1—Conduct a rulemaking that would address the regulatory problems described above.

The proposed rule would revise the timing to complete the Material Balance Reports and Physical Inventory Listing Reports to coincide with a facility's physical inventory. The proposed rule would also provide additional time to complete the paperwork, except for a licensee who is reporting under part 75. These changes would provide most licensees with additional flexibility and reduce the regulatory burden. The proposed rule would require that the Material Balance Reports and Physical

Inventory Listing Report be filed within 60 days (45 days for Category I facilities) of the beginning of the physical inventory. Because the majority of licensees are only required to conduct an annual physical inventory (the exceptions being Category I and II facilities), the reports would only need to be filed once a year instead of twice a year. This would reduce the burden on industry in preparing the reports by about half.

This proposed rule would also revise the categorical exclusion covering approval of safeguards plans, move the MC&A requirements to Part 74, and make the Category II requirements more performance based. The proposed rule represents the final stage of an effort that started in 1982, and would result in the movement of the remaining general MC&A requirements and the requirements for Category II facilities. The proposed risk-informed approach is consistent with the existing MC&A regulations that apply to Category I and III facilities. In addition, the proposed rule would make needed modifications that were missed in earlier updates of the MC&A regulations, correct typographical errors, delete outdated implementation dates, clarify some definitions, and include several new definitions.

Option 2—No Action.

One alternative to amending the regulations is to maintain the current regulations without change. The advantages of the no action alternative is that the resources expended on the rulemaking would be conserved. Further, there is no urgency to make the changes to the Category II requirements because there are currently no active Category II licensees. The current system has worked reasonably well, and the proposed changes to consolidate the MC&A requirements in Part 74 may be desirable, but not necessary. The disadvantages of the no action alternative is that the regulatory problems described above would not be addressed. The regulatory burden reductions to be gained for most licensees by changing the timing and frequency for submittal of the Material Balance Reports and the Physical Inventory Listing Reports would not be achieved. In addition, the location of the MC&A requirements in both Part 70 and Part 74 can cause confusion, particularly for a licensee who refers to the general requirements in Part 70. Consolidation of domestic MC&A requirements would not occur. The requirements for Category II facilities would remain more stringent than the requirements for Category I facilities.

Estimation and Evaluation of Values and Impacts

The principal purpose of the Material Balance Report and the Physical Inventory Listing Report is the periodic reconciliation of licensee records with the records in the NMMSS. A secondary purpose is the use of these records to satisfy the requirement of the US/IAEA Safeguards Agreement to provide an annual Material Balance Report for facilities selected under the Agreement or associated Protocol.

The proposed rule would modify the regulations to require the Material Balance Report and the Physical Inventory Listing Report at the time of a physical inventory. The proposed rule would require the reports to be completed within 60 days of the beginning of the physical inventory for independent spent fuel storage installations, reactors, and Category II and III facilities, and within 45 days of the beginning of the physical inventory for Category I facilities. This modification would not effect licensees reporting under part 75. Because most licensees conduct annual inventories, the reporting burden would be reduced. Reconciliation once a year instead of twice a year would not appear to be a problem for most licensees because the number of transactions is such that reconciliation of records would be manageable. In the case of the gaseous diffusion plants (GDPs) and their large number of transactions, reconciliation could be more difficult. This change would not preclude the GDPs from continuing to request monthly summaries from the NMMSS and reconciling its records with the NMMSS on a bimonthly basis, which is the current practice. One Material Balance Report and Physical Inventory Listing Report per year at the time of the physical inventory would still provide for adequate safeguards for Category III facilities. In addition to reducing the regulatory burden on a licensee, the change would enhance the efficiency of the NMMSS.

Licensees are required to submit the semiannual Material Balance Reports and Physical Inventory Listing Reports within 30 days of March 31 and September 30 of each year. The preestablished timing of the submittals has two drawbacks. Specifically, the reports rarely coincide with a physical inventory, and the NMMSS contractor receives all of the reports for a given period simultaneously. The data from a physical inventory is significantly more meaningful than the book values reported during the interim periods. Staggering the submittals should benefit the NMMSS contractor, as not all licensees conduct inventories at the same time. Requirements for the NMMSS contractor would likely be spread more evenly throughout the year. By modifying the requirement to stipulate that the Material Balance Report and Physical Inventory Listing Report shall be submitted at the time of the physical inventory, these problems could be alleviated, and the data from the reports would be more meaningful.

Another consideration is whether there would be an adverse impact on meeting IAEA safeguards requirements. Pursuant to the terms of the US/IAEA Safeguards Agreement and § 75.35, only one Material Balance Report and Physical Inventory Listing Report is required per year. Consequently there would be no adverse impact.

As the proposed rule would tie submittal of the reports to the physical inventory, the majority of licensees would only need to submit the reports once a year instead of twice a year. This would result in reducing the industry burden for preparing and filing the Material Balance Report and the Physical Inventory Listing Reports by half. The Material Balance Reports are filed using DOE/NRC Form 742. The burden for preparation and submission of each DOE/NRC Form 742 is estimated to be 45 minutes. There are currently about 200 licensees who submit two forms per year. With the submittal of only one report per year for 198 licensees, the burden is reduced by about 149 hours. The Physical Inventory Listing Reports are filed on DOE/NRC Form 742C. The burden for preparing this form is 6 hours. With about 178 licensees submitting the form annually, the total burden reduction is 1068 hours per year. Because some licensees are also required to submit DOE/NRC Form 742 to cover foreign origin source material, the number of licensees required to submit NRC Form 742 is higher than the number submitting DOE/NRC Form 742C.

The burden on the NRC staff would also be reduced because there would be fewer reports to review. NRC review time is approximately 5 minutes per report. With a reduction of 376 reports per year, NRC staff would save about 31 hours per year. In addition, the NRC staff receives five to eight requests per year from licensees who are asking for more time to file the reports. With the additional time being provided for filing the reports, the NRC staff does not expect to receive any requests in the future. The applicant would save the effort necessary in preparing the request, and the staff would save time in reviewing and approving the request.

This alternative would also result in the consolidation of the MC&A requirements in Part 74 and adoption of more risk-informed regulations for Category II facilities. These modifications would enhance the regulatory process by providing any future Category II licensees a better understanding of the procedures and requirements for MC&A. The principal cost for this action would be the modest expenditure of NRC staff resources to issue this rulemaking. However, there are no currently active Category II licensees that would benefit from the revised regulations for Category II facilities. Another advantage is that domestic MC&A requirements would be consolidated and would provide a graded, risk-informed approach to MC&A regulation. In addition, the existing typographical errors, outdated terminology, and old implementation dates would be corrected.

Presentation of Results

The recommended action is to adopt the first option because it would reduce the burden on licensees in preparing and filing their Material Balance Reports and Physical Inventory Listing Reports. The process would become more efficient, and the burden of producing the reports would be reduced by a total of approximately 1,217 staff-hours. In addition to reducing unnecessary regulatory burden on licensees, the changes would enhance the operational efficiency of the NMMSS contractor by spreading the report submittals more evenly throughout the year. This change would not preclude the gaseous diffusion plants with their large number of transactions from continuing to request monthly summaries from the NMMSS to reconcile their records. The proposed rule would also consolidate the MC&A requirements in Part 74 and adopt more risk-informed regulations for Category II facilities. These modifications should enhance the regulatory process by providing any future Category II licensee a better understanding of the procedures and requirements for MC&A. The principal cost for this action would be the modest expenditure of NRC staff resources to issue this rulemaking. The total cost of this rulemaking to the NRC is estimated at 1.2 FTE. The total savings to the industry is about 1217 hours per year. The action is considered to be cost beneficial to licensees and would improve the operational efficiency of the NMMSS contractor. Adequate safeguards would be maintained. Consequently, the Commission believes public confidence would not be adversely affected by this rulemaking.

Decision Rationale

Based on the discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. This rulemaking would save both NRC staff and licensee resources. No other available alternative is believed to be as satisfactory. Thus, this action is recommended.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The majority of companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 72.62, or 76.76) does not apply to this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 51, 61, 70, 72, 73, 74, 75, 76, and 150.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended,

1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835, (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S. C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. In § 51.22, paragraph (c)(12) is revised to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(c) * * *

(12) Issuance of an amendment to a license implementing any requirement of this chapter relating solely to safeguards matters (i.e., protection against sabotage or loss or diversion of special nuclear material), or issuance of an approval of a safeguards plan (or revision thereto) submitted pursuant to a requirement of any part of this chapter, provided that the amendment or approval does not involve any significant construction impacts. These amendments and approvals are confined to:

(i) Organizational and procedural matters;

(ii) Modifications to systems used for security and/or materials accountability;

(iii) Administrative changes; and

(iv) Review and approval of transportation routes pursuant to 10 CFR 73.37.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

3. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

4. In § 61.80, paragraph (g) is revised to read as follows:

§ 61.80 Maintenance of records, reports, and transfers.

* * * * *

(g) Each licensee shall comply with the safeguards reporting requirements of §§ 30.55, 40.64, 74.13, and 74.15 of this chapter if the quantities or activities of materials received or transferred exceed the limits of these sections. Inventory reports required by these sections are not required for materials after disposal.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

6. In § 70.8, paragraphs (b) and (c) are revised to read as follows:

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 70.9, 70.17, 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.59, 70.61, 70.62, 70.64, 70.65, 70.72, 70.73, 70.74, and Appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 70.21, Form N–71 is approved under control number 3150–0056.

(2) In § 70.38, NRC Form 314 is approved under control number 3150–0028.

7. In § 70.19, the introductory text of paragraph (c) is revised to read as follows:

§ 70.19 General license for calibration or reference sources.

* * * * *

(c) The general license in paragraph (a) of this section is subject to the provisions of §§ 70.32, 70.50, 70.55, 70.56, 70.61, 70.62, 70.71, 74.11, and 74.19, and to the provisions of parts 19, 20 and 21 of this chapter. In addition, persons who receive title to, own, acquire, deliver, receive, possess, use or transfer one or more calibration or reference sources pursuant to this general license:

* * * * *

8. In § 70.20a, paragraph (a) is revised to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

(a) A general license is hereby issued to any person to possess formula quantities of strategic special nuclear material of the types and quantities subject to the requirements of §§ 73.20, 73.25, 73.26, and 73.27 of this chapter, and irradiated reactor fuel containing material of the types and quantities subject to the requirements of § 73.37 of this chapter, in the regular course of carriage for another or storage incident thereto. Carriers generally licensed under § 70.20b are exempt from the requirements of this section. Carriers of irradiated reactor fuel for the United States Department of Energy are also exempt from the requirements of this section. The general license is subject to the applicable provisions of §§ 70.7 (a) through (e), 70.32 (a) and (b), and §§ 70.42, 70.52, 70.55, 70.61, 70.62, 70.71, and 74.11.

* * * * *

9. In § 70.22, paragraph (b) is revised to read as follows:

§ 70.22 Contents of applications.

* * * * *

(b) Each application for a license to possess special nuclear material, to possess equipment capable of enriching uranium, to operate an uranium enrichment facility, to possess and use at any one time and location special nuclear material in a quantity exceeding one effective kilogram, except for applications for use as sealed sources and for those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, must contain a full description of the applicant's program for control and accounting of such special nuclear material or enrichment equipment that will be in the applicant's possession under license to show how compliance with the requirements of §§ 74.31, 74.33, 74.41,

or 74.51 of this chapter, as applicable, will be accomplished.

* * * * *

10. In § 70.23, paragraph (a)(6) is revised to read as follows:

§ 70.23 Requirements for the approval of applications.

(a) * * *

(6) Where the applicant is required to submit a summary description of the fundamental material controls provided in his procedures for the control of and accounting for special nuclear material pursuant to § 70.22 (b), the applicant's proposed controls are adequate;

* * * * *

11. In § 70.32, paragraphs (c)(1)(i), (ii), and (iii) are revised to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(c)(1) * * *

(i) The program for control and accounting of uranium source material at an uranium enrichment facility and special nuclear material at all applicable facilities as implemented pursuant to §§ 70.22(b), 74.31(b), 74.33(b), 74.41(b), or 74.51(c) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material at an uranium enrichment facility and for special nuclear material at all applicable facilities as implemented pursuant to §§ 74.31(b), 74.33(b), 74.45(c), or 74.59(e) of this chapter, as appropriate; and

(iii) Other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material at an uranium enrichment facility or of special nuclear material and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to §§ 70.22(b), 74.31(b), 74.33(b), 74.41(b), or 74.51(c) of this chapter and the measurement control program implemented pursuant to §§ 74.31(b), 74.33(b), 74.41(b), or 74.59(e) of this chapter without the prior approval of the Commission. A licensee desiring to make changes that would decrease the effectiveness of its material control and accounting program or its measurement control program shall submit an application for amendment to its license pursuant to § 70.34.

* * * * *

12. Section 70.51 is revised to read as follows:

§ 70.51 Records requirements.

(a) Before license termination, licensees shall forward the following records to the appropriate NRC Regional Office:

(1) Records of disposal of licensed material made under §§ 20.2002 (including burials authorized before January 28, 1981 [1]), 20.2003, 20.2004, 20.2005;

(2) Records required by § 20.2103(b)(4); and

(3) Records required by § 70.25(g).

(b) If licensed activities are transferred or assigned in accordance with § 70.32(a)(3), the licensee shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(1) Records of disposal of licensed material made under §§ 20.2002 (including burials authorized before January 28, 1981 [1]), 20.2003, 20.2004, 20.2005;

(2) Records required by § 20.2103(b)(4); and

(3) Records required by § 70.25(g).

(c)(1) Records which must be maintained pursuant to this part may be the original or a reproduced copy, or microform if the reproduced copy or microform is duly authenticated by authorized personnel, and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(2) If there is a conflict between the Commission's regulations in this part, license condition, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for these records shall apply unless the Commission, pursuant to § 70.14, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

13. Section 70.52 is revised to read as follows:

[1] A previous § 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific Commission authorization. See § 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

§ 70.52 Reports of accidental criticality.

(a) Each licensee shall notify the NRC Operations Center [1] within one hour after discovery of any case of accidental criticality.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour.

§ 70.53 [Removed]

14. Section 70.53 is removed.

§ 70.54 [Removed]

15. Section 70.54 is removed.

§ 70.57 [Removed]

16. Section 70.57 is removed.

§ 70.58 [Removed]

17. Section 70.58 is removed.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

18. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233,2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C.10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L

[1] Commercial telephone number of the NRC Operations Center is (301) 816–5100.

are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

19. In § 72.76, paragraph (a) is revised to read as follows:

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete in computer-readable format and submit to the Commission a Material Balance Report and a Physical Inventory Listing Report in accordance with instructions (NUREG/BR–0007 and NMMSS Report D—24 ''Personal Computer Data Input for NRC Licensees''). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555—0001. These reports provide information concerning the special nuclear material possessed, received, transferred, disposed of, or lost by the licensee. Each report must be submitted within 60 days of the beginning of the physical inventory required by § 72.72(b). The Commission may, when good cause is shown, permit a licensee to submit Material Balance Reports and Physical Inventory Listing Reports at other times. The Commission's copy of this report must be submitted to the address specified in the instructions. These prescribed computer-readable forms replace the DOE/NRC Forms 742 and 742C which have been previously submitted in paper form.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

20. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

21. In § 73.67, paragraph (e)(2)(ii) is revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(e) * * *

(2) * * *

(ii) Notify the shipper of receipt of the material as required in § 74.15 of this chapter, and

* * * * *

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

22. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

23. In § 74.1, paragraph (a) is revised to read as follows:

§ 74.1 Purpose.

(a) This part has been established to contain the requirements for the control and accounting of special nuclear material at fixed sites and for documenting the transfer of special nuclear materials. General reporting requirements as well as specific requirements for certain licensees possessing special nuclear material of low strategic significance, special nuclear material of moderate strategic significance, and formula quantities of strategic special nuclear material are included. Requirements for the control and accounting of source material at enrichment facilities are also included.

* * * * *

24. Section 74.2 is revised to read as follows:

§ 74.2 Scope.

(a) The general reporting and recordkeeping requirements of subpart B of this part apply to each person licensed pursuant to this chapter who possess special nuclear material in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof; or who transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. The general reporting and recordkeeping requirements of subpart B of this part do not apply to licensees whose MC&A reporting and recordkeeping requirements are covered by §§ 72.72, 72.76, and 72.78 of this chapter.

(b) In addition, specific control and accounting requirements are included in subparts C, D, and E of this part for certain licensees who:

(1) Possess and use formula quantities of strategic special nuclear material;

(2) Possess and use special nuclear material of moderate strategic significance;

(3) Possess and use special nuclear material of low strategic significance; or

(4) Possess uranium source material and equipment capable of producing enriched uranium.

(c) As provided in part 76 of this chapter, the regulations of this part establish procedures and criteria for material control and accounting for the issuance of a certificate of compliance or the approval of a compliance plan.

25. In § 74.4, definition for ''Removals'' is removed; the definitions of ''Category IA material'' and ''Inventory difference (ID)'' are revised; and the definitions for ''Beginning inventory (BI),'' ''Plant,'' ''Removals from inventory,'' and ''Removals of material from process'' are added in alphabetical order to read as follows:

§ 74.4 Definitions.

* * * * *

Beginning inventory (BI) means the book inventory quantity at the beginning of an inventory period, and is the reconciled physical inventory entered into the books as an adjusted inventory at the completion of the prior inventory period.

* * * * *

Category IA material means SSNM directly useable in the manufacture of a nuclear explosive device, except if:

(1) The dimensions are large enough (at least two meters in one dimension, greater than one meter in each of two dimensions, or greater than 25cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of an encapsulated item of SSNM is such that it cannot be carried inconspicuously by one person (i.e., at least 50 kilograms gross weight); or

(3) The quantity of SSNM (less than 0.05 formula kilograms) in each container requires protracted diversions to accumulate five formula kilograms.

* * * * *

Inventory difference (ID) means the arithmetic difference obtained by subtracting the quantity of SNM tabulated from a physical inventory from the book inventory quantity. Book inventory quantity is equivalent to the beginning inventory (BI) plus additions to inventory (A) minus removals from inventory (R), while the physical inventory quantity is the ending inventory (EI) for the material balance period in question (as physically determined). Thus mathematically, $ID = (BI + A - R) - EI$ or $ID = BI + A - R - EI$

* * * * *

Plant means a set of processes or operations (on the same site, but not necessarily all in the same building) coordinated into a single manufacturing, R&D, or testing effort. A scrap recovery operation, or an analytical laboratory, serving both on-site and off-site customers (or more than one on-site manufacturing effort) must be treated as a separate plant. Physical inventories are to be conducted for each plant as well as for a total site.

* * * * *

Removals from inventory means measured quantities of special nuclear material contained in:

(1) Shipments;

(2) Waste materials transferred to an on-site holding account via a DOE/NRC Form 741 transaction;

(3) Measured discards transported offsite; and

(4) Effluents released to the environment.

Removals of material from process (or removals from process) means measured quantities of special nuclear material contained in:

(1) Effluents released to the environment;

(2) Previously unencapsulated materials that have been encapsulated as sealed sources;

(3) Waste materials that will not be subject to further on-site processing and which are under tamper-safing;

(4) Ultimate product placed under tamper-safing; and

(5) Any materials (not previously designated as *removals from process*) shipped offsite.

* * * * *

26. In § 74.8, paragraph (b) is revised to read as follows:

§ 74.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.31, 74.33, 74.41, 74.43, 74.45, 74.51, 74.57, and 74.59.

* * * * *

27. The heading of Subpart B is revised to read as follows:

Subpart B—General Reporting and Recordkeeping Requirements

28. Section 74.13 is revised to read as follows:

§ 74.13 Material status reports.

(a) Each licensee, including nuclear reactor licensees as defined in §§ 50.21 and 50.22 of this chapter, authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall complete and submit in computer-readable format Material Balance Reports concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by it. This prescribed computer-readable report replaces the DOE/NRC Form 742 which has been previously submitted in paper form. The Physical Inventory Listing Report must be submitted with each Material Balance Report. This prescribed computer-readable report replaces the DOE/NRC Form 742C which has been previously submitted in paper form. Each licensee shall prepare and submit the reports described in this paragraph in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 ''Personal Computer Data Input for NRC Licensees''). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555–0001. Each licensee shall submit a report within 60 calendar days of the beginning of the physical inventory required by §§ 74.19(c), 74.31(c)(5), 74.33(c)(4), or 74.43(c)(6) or 45 calendar days of the beginning of the physical inventory required by § 74.59(f)(1). The Commission may permit a licensee to submit the reports at other times for good cause.

(b) Any licensee who is required to submit routine Material Status Reports pursuant to § 75.35 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit these reports only as provided in that section (instead of as provided in paragraph (a)(1) of this section).

29. Section 74.17 is revised to read as follows:

§ 74.17 Special nuclear material physical inventory summary report.

(a) Each licensee subject to the requirements of § 74.31 or § 74.33 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of each physical inventory required by § 74.31(c)(5) or § 74.33(c)(4). The licensee shall report the physical inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(b) Each licensee subject to the requirements of § 74.41(a) shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of each physical inventory required by § 74.43(c)(7). The licensee shall report the physical inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

(c) Each licensee subject to the requirements of § 74.51 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 45 calendar days from the start of each physical inventory required by § 74.59(f). The licensee shall report the physical inventory results by plants and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

30. Section 74.19 is added to subpart B to read as follows:

§ 74.19 Recordkeeping.

(a) Licensees subject to the recordkeeping requirements of §§ 74.31, 74.33, 74.43, or 74.59 are exempt from the requirements of paragraphs (a)(1) through (4) of this section. Otherwise:

(1) Each licensee shall keep records showing the receipt, inventory (including location and unique identity), acquisition, transfer, and disposal of all special nuclear material in its possession regardless of its origin or method of acquisition.

(2) Each record relating to material control or material accounting that is required by the regulations in this chapter or by license condition must be maintained and retained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the licensee shall retain the record until the Commission terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

(3) Each record of receipt, acquisition, or physical inventory of special nuclear material that must be maintained pursuant to paragraph (a)(1) of this section must be retained as long as the licensee retains possession of the material and for 3 years following transfer or disposal of such material.

(4) Each record of transfer of special nuclear material to other persons must be retained by the licensee who transferred the material until the Commission terminates the license authorizing the licensee's possession of the material.

(b) Each licensee that is authorized to possess special nuclear material in a quantity exceeding one effective kilogram at any one time shall establish, maintain, and follow written material control and accounting procedures that are sufficient to enable the licensee to account for the special nuclear material in its possession under license. The licensee shall retain these procedures until the Commission terminates the license that authorizes possession of the material and retain any superseded portion of the procedures for 3 years after the portion is superseded.

(c) Other than licensees subject to §§ 74.31, 74.33, 74.41, or 74.51, each licensee who is authorized to possess special nuclear material, at any one time and site location, in a quantity greater than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall conduct a physical inventory of all special nuclear material in its possession under license at intervals not to exceed 12 months. The results of these physical inventories need not be reported to the Commission, but the licensee shall retain the records associated with each physical inventory until the Commission terminates the license that authorized the possession of special nuclear material.

(d) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if the reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, or specifications must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

31. In § 74.31, paragraphs (b) and (c)(4) are revised as follows:

§ 74.31 Nuclear material control and accounting for special nuclear material of low strategic significance.

* * * * *

(b) Implementation: Each applicant for a license, and each licensee that, upon application for modification of its license, would become newly subject to the performance objectives of paragraph (a) of this section, shall submit a fundamental nuclear material control (FNMC) plan describing how the requirements of paragraph (c) of this section will be met. The FNMC plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(c) * * *

(4) In each inventory period, control total material control and accounting measurement uncertainty so that twice its standard error is less than the greater of 9,000 grams of U–235 or 0.25 percent of the active inventory, and assure that any measurement performed under contract is controlled so that the licensee can satisfy this requirement;

* * * * *

Subpart D—Special Nuclear Material of Moderate Strategic Significance

32. Sections 74.41, 74.43, and 74.45 are added to subpart D to read as follows:

§ 74.41 Nuclear material control and accounting for special nuclear material of moderate strategic significance.

(a) *General performance objectives.* Each licensee who is authorized to possess special nuclear material (SNM) of moderate strategic significance other than as sealed sources and to use this material at any site other than a nuclear reactor licensed pursuant to part 50 of this chapter, an irradiated fuel reprocessing plant, or an operation involved with waste disposal, shall establish, implement, and maintain a Commission-approved material control and accounting (MC&A) system that will achieve the following objectives:

(1) Maintain accurate, current, and reliable information on, and confirm, the quantities and locations of SNM in the licensee's possession;

(2) Conduct investigations and resolve any anomalies indicating a possible loss of special nuclear material;

(3) Permit rapid determination of whether an actual loss of a significant quantity of SNM has occurred, with significant quantity being either:

(i) More than one formula kilogram of strategic SNM; or

(ii) 10,000 grams or more of uranium-235 contained in uranium enriched up to 20.00 percent.

(4) Generate information to aid in the investigation and recovery of missing SNM in the event of an actual loss.

(b) *Implementation schedule.* Each applicant for a license who would, upon issuance of a license pursuant to any part of this chapter, be subject to the requirements of paragraph (a) of this section shall:

(1) Submit a fundamental nuclear material control (FNMC) plan describing how the performance objectives of § 74.41(a) will be achieved, and how the system capabilities required by § 74.41(c) will be met; and

(2) Implement the NRC approved plan submitted pursuant to paragraph (b)(1) of this section upon the Commission's issuance of a license or by the date specified in a license condition.

(c) *System capabilities.* To achieve the general performance objectives specified in § 74.41(a), the MC&A system must include the capabilities described in §§ 74.43 and 74.45, and must incorporate checks and balances that are sufficient to detect falsification of data and reports that could conceal diversion of SNM by:

(1) A single individual, including an employee in any position; or

(2) Collusion between two individuals, one or both of whom have authorized access to SNM.

§ 74.43 Internal controls, inventory, and records.

(a) Licensees subject to § 74.41 shall maintain the internal control, inventory, and recordkeeping capabilities required in paragraphs (b), (c), and (d) of this section.

(b) Internal controls. (1) A management structure shall be established, documented, and maintained that assures:

(i) Clear overall responsibility for material control and accounting (MC&A) functions;

(ii) Independence from production and manufacturing responsibilities; and

(iii) Separation of key responsibilities.

(2) The overall planning, coordination, and administration of the MC&A functions for special nuclear material (SNM) shall be vested in a single individual at an organizational level sufficient to assure independence of action and objectiveness of decisions.

(3) The licensee shall provide for the adequate review, approval, and use of written MC&A procedures that are identified in the approved FNMC plan as being critical to the effectiveness of the described system.

(4) The licensee shall assure that personnel who work in key positions where mistakes could degrade the effectiveness of the MC&A system are trained to maintain a high level of safeguards awareness and are qualified to perform their duties and/or responsibilities.

(5) The licensee shall establish, document, and maintain an item control program that:

(i) Provides current knowledge of SNM items with respect to identity, element and isotope content, and stored location; and

(ii) Assures that SNM items are stored and handled, or subsequently measured,

in a manner such that unauthorized removal of 200 grams or more of plutonium or uranium-233 or 300 grams or more of uranium-235, as one or more whole items and/or as SNM removed from containers, will be detected.

(6) Exempted from the requirements of paragraph (b)(5) of this section are items that exist for less than 14 calendar days and licensee-identified items each containing less than 200 grams of plutonium or uranium-233 or 300 grams or more of uranium-235 up to a cumulative total of one formula strategic SNM or 17 kilograms of uranium-235 contained in uranium enriched to 10.00 percent or more but less than 20.00 percent in the uranium-235 isotope.

(7) Conduct and document shipper-receiver comparisons for all SNM receipts, both on an individual batch basis and a total shipment basis, and ensure that any shipper-receiver difference that is statistically significant and exceeds twice the estimated standard deviation ofthe difference estimator and 200 grams of plutonium or uranium-233 or 300 grams of uranium-235 is investigated and resolved; and

(8) Perform independent assessments of the total MC&A system, at intervals not to exceed 18 months, that assess the performance of the system, review its effectiveness, and document management's action on prior assessment recommendations and identified deficiencies. These assessments must include a review and evaluation of any contractor who performs SNM accountability measurements for the licensee.

(c) Inventory control and physical inventories. The licensee shall:

(1) Provide unique identification for each item on inventory and maintain inventory records showing the identity, location, and quantity of SNM for these items;

(2) Document all transfers of SNM between designated internal control areas within the licensee's site;

(3) Maintain and follow procedures for tamper-safing of containers or vaults containing SNM, if tamper-safe seals are to be used for assuring the validity of prior measurements, which include control of access to, and distribution of, unused seals and to records showing the date and time of seal application;

(4) Maintain and follow procedures for confirming the validity of prior measurements associated with unencapsulated and unsealed items on ending inventory;

(5) Maintain and follow physical inventory procedures to assure that:

(i) The quantity of SNM associated with each item on ending inventory is a measured value;

(ii) Each item on ending inventory is listed and identified to assure that all items are listed and no item listed more than once;

(iii) Cutoff procedures for transfers and processing are established so that all quantities are inventoried and none are inventoried more than once;

(iv) Cutoff procedures for records and reports are established so that all transfers for the inventory and material balance interval, and no others, are included in the records for the material balance period in question;

(v) Upon completion of the physical inventory, all book and inventory records, for total plant and individual internal control areas, are reconciled with and adjusted to the results of the physical inventory; and

(vi) Measurements will be performed for element and isotope content on all quantities of SNM not previously measured.

(6) Conduct physical inventories according to written instructions for each physical inventory which:

(i) Assign inventory duties and responsibilities;

(ii) Specify the extent to which each internal control area and process is to be shut down, cleaned out, and/or remain static;

(iii) Identify the basis for accepting previously made measurements and their limits of error; and

(iv) Designate measurements to be made for physical inventory purposes and the procedures for making these measurements.

(7) For each plant, conduct physical inventories of all possessed SNM at intervals not to exceed 9 calendar months; and

(8) Within 60 calendar days after the start of each physical inventory required by paragraph (c)(7) of this section:

(i) Calculate, for the material balance period terminated by the physical inventory, the inventory difference (ID) and its associated standard error of inventory difference (SEID) for both element and isotope;

(ii) Reconcile and adjust the book record of quantity of element and isotope content, as appropriate, to the results of the physical inventory; and

(iii) Investigate and report to the Director, Office of Nuclear Material Safety and Safeguards, any occurrence of SEID exceeding 0.125 percent of active inventory, and any occurrence of ID exceeding both three times SEID and 200 grams of plutonium or uranium-233 or 300 grams of uranium-235 contained in high enriched uranium, or 9000 grams of uranium-235 contained in low enriched uranium. The report will include a statement of the probable reasons for the excessive inventory difference and the corrective actions taken or planned.

(d) Recordkeeping. The licensee shall:

(1) Maintain records of the receipt, shipment, disposal, and current inventory associated with all possessed SNM;

(2) Maintain records of the quantities of SNM added to and removed from process;

(3) Maintain records of all shipper-receiver evaluations associated with SNM receipts;

(4) Retain each record pertaining to receipt and disposal of SNM until the Commission terminates the license; and

(5) Establish records that will demonstrate that the performance objectives of § 74.41(a)(1) through (4), the system capabilities of paragraphs (b) and (c) of this section and § 74.45(b) and (c) have been met, and maintain these records in an auditable form, available for inspection, for at least 3 years, unless a longer retention time is specified by § 74.19(b) of this part, part 75 of this chapter, or by a specific license condition.

§ 74.45 Measurements and measurement control.

(a) Licensees subject to § 74.41 shall establish and maintain the measurement and measurement control capabilities required by paragraphs (b) and (c) of this section.

(b) Measurements. The licensee shall:

(1) Establish, maintain, and use a program for the measurement of all SNM received, produced, transferred between internal control areas, on inventory, or shipped, discarded, or otherwise removed from inventory, except for:

(i) Sealed sources that have been determined by other means to contain less than 10 grams of uranium-235, uranium-233, or plutonium each;

(ii) Samples received, transferred between internal control areas, or on inventory that have been determined by other means to contain less than 10 grams of uranium-235, uranium-233, or plutonium each;

(iii) Receipt of sealed sources, of any quantity, previously manufactured and shipped by the licensee and which are returned to the licensee, provided the unique identity and encapsulation integrity have not been compromised, and the booked receipt quantity equals the previously shipped quantity for the involved sealed sources; and

(iv) Heterogeneous scrap that cannot be accurately measured in its as

received form, provided this scrap is measured after dissolution within 18 months of receipt. The after dissolution measurement must include measurement of both the resulting solution and any undissolved residues, before any co-mingling with other scrap solutions or residues.

(2) Maintain and follow a program for the development and use of written procedures that includes documented review and approval of these procedures, and any revisions thereof, before use, for:

(i) Preparing or acquiring, maintaining, storing, and using reference standards;

(ii) Calibrating measurement systems, performing bulk mass and volume measurements, conducting nondestructive assay measurements, obtaining samples, and performing laboratory analyses for element concentration and isotope abundance; and

(iii) Recording, reviewing, and reporting measurements.

(c) Measurement control. To maintain measurement quality and to estimate measurement uncertainty values, the licensee shall:

(1) Assign responsibility for planning, developing, coordinating, and administering a measurement control program to an individual who has no direct responsibility for performing measurements or for SNM processing or handling, and who holds a position at an organizational level which permits independence of action and has adequate authority to obtain all the information required to monitor and evaluate measurement quality as required by this section.

(2) Ensure that any contractor who performs MC&A measurements services conforms with applicable requirements in paragraphs (c)(5), (6), (7), (10) and (11) of this section. Conformance must include reporting by the contractor of sufficient measurement control data to allow the licensee to calculate bias corrections and measurement limits of error.

(3) Ensure that potential sources of sampling error are identified and that samples are representative by performing process sampling tests using well characterized materials to establish or verify the applicability of utilized procedures for sampling SNM and for maintaining sample integrity during transport and storage. These sampling tests or sample integrity tests, as appropriate, shall be conducted whenever:

(i) A new sampling procedure or technique is used, or new sampling equipment is installed;

(ii) A sampling procedure, technique, or sampling equipment is modified to the extent that a systematic sampling error could be introduced; and

(iii) Sample containers, sample transport methods, or sample storage conditions are changed or modified to the extent that a systematic sampling error could be introduced.

(4) Establish and maintain a measurement control program so that for each inventory period the SEID is less than 0.125 percent of the active inventory, and assure that any MC&A measurements performed under contract are controlled so that the licensee can satisfy this requirement.

(5) Generate current data on the performance of each measurement system used during each material balance period for the establishment of measured values and estimated measurement uncertainties, including estimates of bias, variance components for calibration, sampling, and repeat measurements. The program data must reflect the current process and measurement conditions existing at the time the control measurements are made.

(6) Use standards on an ongoing basis for the calibration and control of all measurement systems used for SNM accountability. Calibrations shall be repeated whenever any significant change occurs in a measurement system or when program data indicate a need for recalibration. Calibrations and control standard measurements shall be based on standards whose assigned values are traceable to certified reference standards or certified standard reference materials. Additionally, control standards shall be representative of the process material or items being measured by the measurement system in question.

(7) Conduct control measurements to provide current data for the determination of random error behavior. On a predetermined schedule, the program shall include, as appropriate:

(i) Replicate analyses of individual samples;

(ii) Analysis of replicate process samples;

(iii) Replicate volume measurements of bulk process batches;

(iv) Replicate weight measurements of process items and bulk batches, or alternatively, the use of data generated from the replicate weighings of control standard weights as derived from the control standard program; and

(v) Replicate NDA measurements of individual process containers (items), or alternatively, the use of data generated from the replicate measurements of NDA control standards as derived from the control standard program.

(8) Use all measurements and measurement controls generated during the current material balance period for the estimation of the SEID.

(9) Evaluate with appropriate statistical methods all measurement system data generated in paragraph (c)(5) of this section to determine significant contributors to the measurement uncertainties associated with inventory differences and shipper-receiver differences, so that if SEID exceeds the limits established in paragraph (c)(4) of this section, the cause of the excessive SEID can be identified for corrective action with respect to controlling the standard error within applicable limits.

(10) Establish and maintain a statistical control system, including control charts and formal statistical procedures, designed to monitor the quality of each measurement device or system. Control chart limits must be established to be equivalent to levels of significance of 0.05 and 0.001.

(11) Promptly investigate and take any appropriate corrective action whenever a control datum exceeds an 0.05 control limit, and whenever a control datum exceeds an 0.001 control limit, the measurement system that generated the datum shall immediately be placed out-of-service with respect to MC&A measurements until the deficiency has been corrected and the system brought into control within the 0.05 control limits.

33. In § 74.51, paragraphs (c) and (d) are revised to read as follows:

§ 74.51 Nuclear material control and accounting for strategic special nuclear material.

* * * * *

(c) Implementation dates. Each applicant for a license, and each licensee that, upon application for modification of a license, would become newly subject to paragraph (a) of this section, shall submit a fundamental nuclear material control (FNMC) plan describing how the MC&A system shall satisfy the requirement of paragraph (b) of this section. The FNMC plan shall be implemented when a license is issued or modified to authorize the activities being addressed in paragraph (a) of this section, or by the date specified in a license condition.

(d) Notwithstanding § 74.59(f)(1), licensees shall perform at least three bimonthly physical inventories after implementation of the NRC approved FNMC Plan and shall continue to perform bimonthly inventories until performance acceptable to the NRC has

been demonstrated and the Commission has issued formal approval to perform semiannual inventories. Licensees who have prior experience with process monitoring and/or can demonstrate acceptable performance against all Plan commitments may request authorization to perform semiannual inventories at an earlier date.

34. In § 74.57, the introductory text of paragraph (c) and paragraph (f)(2) are revised to read as follows:

§ 74.57 Alarm resolution.

* * * * *

(c) Each licensee shall notify the NRC Operations Center by telephone of any MC&A alarm that remains unresolved beyond the time period specified for its resolution in the licensee's fundamental nuclear material control plan. Notification must occur within 24 hours. The licensee may consider an alarm to be resolved if:

* * * * *

(f) * * *

(2) Within 24 hours, the licensee shall notify the NRC Operations Center by telephone that an MC&A alarm resolution procedure has been initiated.

35. In § 74.59, paragraphs (d)(1),(f)(1)(i) and (iii), and (h)(2)(ii) are revised to read as follows:

§ 74.59 Quality assurance and accounting requirements.

* * * * *

(d) * * *

(1) Substantiate the plutonium element and uranium element and isotope content of all SSNM received, produced, transferred between areas of custodial responsibility, on inventory, or shipped, discarded, or otherwise removed from inventory;

* * * * *

(f) * * *

(1) * * *

(i) Calculate the inventory difference (ID); estimate the standard error of the inventory difference (SEID); and investigate and report any SEID estimate of 0.1 percent or more of active inventory, and any ID that exceeds both three times SEID and 200 grams of plutonium or uranium-233, or 300 grams of uranium-235 contained in high enriched uranium.

* * * * *

(iii) Investigate and report to the Director, Office of Nuclear Material Safety and Safeguards, any difference that exceeds three times the standard deviation determined from the sequential analysis;

* * * * *

(h) * * *

(2) * * *

(ii) Any scrap measured with a standard deviation greater than five percent of the measured amount is recovered so that the results are segregated by inventory period and recovered within six months of the end of the inventory period in which the scrap was generated except where it can be demonstrated that the scrap measurement uncertainty will not cause noncompliance with paragraph (e)(5) of this section.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

36. The authority citation for Part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97—425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

37. In § 75.21, paragraph (c)(2) is revised to read as follows:

§ 75.21 General requirements.

* * * * *

(c) * * *

(2) Until installation information has been submitted by the licensee, the procedures shall be sufficient to document changes in the quantity of nuclear material in or at its installation. Observance of the procedures described in §§ 40.61 or 74.15 of this chapter (or the corresponding provisions of the regulations of an Agreement State) by any licensee subject thereto shall constitute compliance with this paragraph.

* * * * *

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

38. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

39. In § 76.113, paragraph (a) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material—Category I.

(a) The requirements for material control and accounting for formula quantities of strategic special nuclear material (Category I) are contained in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 of this chapter.

* * * * *

40. In § 76.115, paragraph (a) is revised to read as follows:

§ 76.115 Special nuclear material of moderate strategic significance—Category II.

(a) The requirements for material control and accounting for special nuclear material of moderate strategic significance (Category II) are contained in §§ 74.11. 74.13, 74.15, 74.17, 74.19, 74.41, 74.43, 74.45, 74.81, and 74.82 of this chapter.

* * * * *

41. In § 76.117, paragraph (a) is revised to read as follows:

§ 76.117 Special nuclear material of low strategic significance—Category III.

(a) The requirements for material control and accounting for special nuclear material of low strategic significance (Category III) are contained in §§ 74.11, 74.13, 74.15, 74.17, 74.19, 74.33, 74.81, and 74.82 of this chapter. However, inventories of uranium outside of the enrichment processing equipment conducted at least every 370 days are deemed to satisfy the requirements of § 74.19(c).

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

42. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97—425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

43. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of Agreement State licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all applicable rules, regulations, and orders of the Commission including the provisions of §§ 30.7 (a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, and 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7 (a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7 (a) through (f), 70.9, 70.10, 70.32, 70.42, 70.52, 70.55, 70.56, 70.60 to 70.62 of part 70 of this chapter; §§ 74.11, 74.15, and 74.19 of part 74 of this chapter; and to the provisions of 10 CFR parts 19, 20 and 71 and subparts C through H of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, Maryland, this 23rd day of May, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–13490 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. SA26, SA226, and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft, Inc. (Fairchild Aircraft) SA26, SA226, and SA227 series airplanes. The proposedAD would require you to modify the negative torque sensing test system to allow the igniters to automatically turn when an engine senses low torque. The proposed AD is the result of two instances of a dual engine flameout on the affected airplanes. The actions specified by the proposed AD are intended to prevent a dual engine flameout on the affected airplanes by providing a system that automatically turns on the engine igniters when low torque is sensed.A dual engine flameout could result in failure of both engines with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 27, 2001.

ADDRESSES: Submit comments in triplicate to FAA,Central Region, Office of the Regional Counsel,Attention: Rules Docket No. 2000–CE–36–AD, 901 Locust,Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m.,Monday through Friday, holidays excepted.

Service information that applies to the proposedAD may be obtained from Fairchild Aircraft, Inc., P.O.Box 790490, San Antonio, Texas 78279–0490; telephone:(210) 824–9421; facsimile: (210) 820–8609. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ingrid Knox,Aerospace Engineer, FAA, Airplane Certification Office,2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5139; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–36–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? Several occurrences of dual-engine flameout on aircraft have prompted FAA to examine the service history of certain type-certificated airplanes. Among those examined were the Fairchild Aircraft SA26, SA226, and SA227 series airplanes.

Our analysis reveals the following:

—Two incidents of dual-engine flameout on Fairchild Aircraft SA227 series airplanes; and

—The incidents are unique to the specific airplane configuration and not the generic engine installation.

What are the consequences if the condition is not corrected? A dual engine flameout could result in failure of both engines with consequent loss of control of the airplane.

Relevant Service Information

Is there service information that applies to this subject? Fairchild Aircraft has issued the following service bulletins:

—Service Bulletin 26–74–30–048 (FA Kit Drawing 26K82301), Revised: April 13, 2000, which applies to certain Model SA26–AT airplanes;
—Service Bulletin No. 226–74–003 (FA Kit Drawing 27K82087), Issued: March 21, 2000, which applies to allSA226 series airplanes;
—Service Bulletin 227–74–003 (FA Kit Drawing 27K82087), Issued: March 21, 2000, which applies to certain Model SA227–TT airplanes; and
—Service Bulletin 227–74–001, Issued: July 8,1986, which applies to certain Models SA227–AT and SA227–AC airplanes.

What are the provisions of this service bulletin? The service bulletins specify the incorporation of a kit that would modify the negative torque sensing test system to allow the igniters to automatically turn when an engine senses low torque.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Fairchild Aircraft SA26, SA226, and SA227 series airplanes of the same type design;
—The condition is unique to the specific airplane configuration and not the generic engine installation;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to incorporate the applicable kit as specified in the previously-referenced service information.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 259 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $60 per hour = $960	Ranges between $1,726 and $6,873 per airplane (we will use a firgure of $4,000.	$4,960	$1,284,640

Compliance Time of the Proposed AD

What is the compliance time of the proposed AD? The compliance time of this proposed AD is within the next 6 calendar months after the effective date of this proposed AD.

Why is the proposed compliance time presented in calendar time instead of hours time-in-service (TIS)? Although a dual-engine flameout could only occur on the affected airplanes during airplane operation, the condition is not directly related to airplane usage. The condition exists on the airplanes regardless of whether the airplane has accumulated 50 hours time-in-service (TIS) or 5,000 hours TIS.

The FAA has determined that the 6-calendar-month compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and accomplish the actions in this proposed AD; and
—Assures that the unsafe condition referenced in this proposed AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Fairchild Aircraft, Inc.: Docket No. 2000–CE–36–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
SA26–AT	AT100 through AT180E.
SA226–AT	AT001 through AT074.
SA226–T	T201 through T275, and T277 through T291.
SA226–T(B)	T276 and T292 through T417.
SA226–TC	TC201 through TC419.

Model	Serial Nos.
SA227–AC	AC406, AC415, AC416, AC420 through AC633, AC637, AC638, AC641 through AC644, AC647, AC648, AC651, AC652, AC656, and AC657.
SA227–AT	AT423 through AT631.
SA227–TT	TT421 through TT547.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent a dual engine flameout on the affected airplanes by providing a system that automatically turns on the engine igniters when low torque is sensed. A dual engine flameout could result in failure of both engines with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Incorporate the kit specified in the applicable service bulletin. This kit modifies the negative torque sensing test system to allow the igniters to automatically turn when an engine senses low torque.	Within the next 6 calendar months after the effective date of this AD.	Accomplish the modification in accordance with the instructions provided with the kit that is referenced in either Fairchild Aircraft Service Bulletin 26–74–30–048 (FA Kit Drawing 26K82301), Revised: April 13, 2000; Fairchild Aircraft Service Bulletin No. 226–74–003 (FA Kit Drawing 27K82087), Issued: March 21, 2000; Fairchild Aircraft Service Bulletin 227–74–003 (FA Kit Drawing 27K82087), Issued: March 21, 2000; or Fairchild Aircraft Service Bulletin 227–74–001, Issued: July 8, 1986, as applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Fort Worth Airplane CertificationOffice (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager,Fort Worth ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Ingrid Knox, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, FortWorth, Texas 76193–0150; telephone: (817) 222–5139; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 21, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–13466 Filed 5–29–01; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA175–4117; FRL–6987–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Pittsburgh-Beaver Valley Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh Area) to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Pittsburgh area is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. The EPA is also proposing to approve the maintenance plan, submitted by the Pennsylvania Department of Environmental Protection (PADEP) on April 9, 2001, as a revision to the Pennsylvania State Implementation Plan (SIP). Approval of the maintenance plan would put into place a plan for maintaining the 1-hour ozone standard for the next 10 years in the Pittsburgh area. PADEP submitted a 1990 base year emissions inventory for nitrous oxides (NO_X) to EPA on March 22, 1996 and supplemented the inventory on February 18, 1997. EPA is also proposing to approve the 1990 NO_X base year inventory. Lastly, EPA is also proposing to convert the limited approval of Pennsylvania's New Source Review (NSR) program to full approval throughout the Commonwealth, with the exception of the 5-county Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area where it will retain its limited approval status until that area has an approved attainment demonstration for the 1-hour ozone standard.

DATES: Written comments must be received on or before June 29, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Resources, Bureau of Air

Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033, or via e-mail at Webster.Jill@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 9, 2001, the Commonwealth submitted a request that EPA redesignate the Pittsburgh area to attainment. The Commonwealth simultaneously submitted its proposed maintenance plan for the Pittsburgh area and requested that EPA parallel process its approval of that plan as a SIP revision. In this document, EPA will answer the following:

What action is EPA proposing to take?
Why is EPA taking this action?
What would be the effect of this redesignation?
What is the background for this action?
What are the redesignation review criteria?
What is EPA's analysis of the commonwealth's request?

What actions is EPA proposing to take?

Pursuant to a request from the Commonwealth of Pennsylvania, EPA is proposing to redesignate the Pittsburgh moderate ozone area from nonattainment to attainment of the 1-hour ozone NAAQS. We are also proposing to approve the Pittsburgh area's maintenance plan submitted by PADEP on April 9, 1990 for approval by EPA as a SIP revision. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its SIP. If the proposed maintenance plan is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, Pennsylvania will adopt its maintenance plan. The final rulemaking action by EPA will occur only after the SIP revision (i.e., the Pittsburgh area's maintenance plan) has been adopted by Pennsylvania and submitted formally to EPA for incorporation into the SIP.

Why is EPA taking this action?

The Pittsburgh area meets the redesignation and maintenance plan requirements of the Clean Air Act (CAA).

What would be the effect of this redesignation?

The redesignation would change the official designation of the Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland from nonattainment to attainment for the 1-hour ozone standard. It would also put into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This maintenance plan includes contingency measures to address any future violations of the 1-hour ozone NAAQS.

What is the background for this action?

On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), the Pennsylvania counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland were designated as the Pittsburgh-Beaver Valley moderate ozone nonattainment area. On November 12, 1993, the Commonwealth of Pennsylvania formally submitted a redesignation request for the Pittsburgh ozone nonattainment area. At the same time, the Commonwealth submitted a maintenance plan for the Pittsburgh area as a SIP revision. The maintenance plan was subsequently amended on January 13, 1994. In November 1994, the Commonwealth of Pennsylvania suspended the implementation of certain key control programs for which substantial emission reduction credit had been taken in the submitted maintenance plan—rendering it no longer approvable. Not until May 12, 1995 did Pennsylvania submit a revised maintenance plan to correct the deficiencies caused by the suspension of the previous version's key control strategies. Early during the 1995 ozone season, and prior to the time EPA could initiate rulemaking on the May 12, 1995 submittal, the Pittsburgh area violated the ozone NAAQS, making the area ineligible for redesignation. The Commonwealth chose not to withdraw its redesignation request. Therefore, on May 1, 1996 (61 FR 19193), EPA disapproved the Commonwealth's request based upon the fact that the area violated the NAAQS for ozone in 1995.

On November 25, 1996 the Commonwealth certified that the Pittsburgh area monitored no exceedances during 1996 and formally requested an attainment date extension from November 1996 to November 1997. EPA granted the Commonwealth an attainment date extension on February 25, 1997 (62 FR 8389). Subsequently, the area violated the NAAQS again during the 1997 ozone season. As discussed later in this document, the Commonwealth has since adopted and implemented additional control measures in the Pittsburgh area to reduce ozone precursors.

The Pittsburgh area has recorded three years of complete quality-assured, violation-free ambient air quality monitoring data for the 1998 to 2000 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS. On April 9, 2001, PADEP submitted a request that EPA redesignate the Pittsburgh area from nonattainment to attainment of the 1-hour ozone standard. The PADEP also requested that EPA parallel process its approval of the maintenance plan in concert with the Commonwealth's procedures for amending its SIP.

What are the redesignation review criteria?

The Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) The State containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 on April 16, 1992 (57 FR 13498) and supplemented on April 28, 1992 (57 FR 18070). The EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994, (Nichols, October 1994).

2. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide, (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

3. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after

November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

4. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992).

5. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.

6. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

7. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

What Is EPA's analysis of the Commonwealth's request?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H, based upon three complete consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location the duration of the monitoring period required for demonstrating attainment. The PADEP submitted ozone monitoring data for the April through October ozone season from 1998 to 2000. This data has been quality assured and is recorded in AIRS. During the 1998 to 2000 time period, the design value is 123 parts per billion. The average annual number of expected exceedances is 1.0 for that same time period. Therefore, the first criterion of section 107(d)(3)(E) has been satisfied.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 110 Requirements: General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, an enhanced Inspection and Maintenance (I/M) program, and provisions for public and local agency participation. For the purposes of redesignation, the Pennsylvania SIP was reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions for the Pittsburgh area. EPA has concluded that the Commonwealth's SIP for the Pittsburgh area satisfies all of the section 110 SIP requirements of the CAA.

Part D: General Provisions for Nonattainment Areas: Before the Pittsburgh area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Pittsburgh area was classified as moderate ozone nonattainment. Therefore, in order to be redesignated, the Commonwealth must meet the applicable requirements of subpart 1 of part D—specifically section 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements: EPA has determined that the redesignation request received from PADEP for the Pittsburgh area has satisfied all the relevant submittal requirements under section 172(c) necessary for the area to be redesignated.

Earlier this year, on January 10, 2001 (66 FR 1925), EPA proposed that the requirements of section 172(c)(1) and 182(b)(1) concerning submission of an ozone attainment demonstration and reasonably available control measures for reasonable further progress (RFP) or attainment will no longer be applicable to the area.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. Section 182(b)(1)(A) sets forth the specific requirements for RFP. On March 22, 1996, the Commonwealth submitted a 15% Rate of Progress plan for the Pittsburgh area. EPA granted conditional of that 15% plan on January 14, 1998 (63 FR 2147). On April 3, 2001 (66 FR 17634), EPA converted its conditional approval of the Pittsburgh area's 15% plan to a full approval. By meeting the specific 15% plan RFP requirement of section 182(b)(1)(A), the Pittsburgh area is also meeting the RFP requirement of section 172(c)(2).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. On January 14, 1998 (63 FR 2147), EPA published a conditional approval of the 1990 base year emissions inventory of volatile organic compounds (VOCs) submitted by PADEP for the Pittsburgh area. On April 3, 2001, EPA converted its conditional approval of the VOC emissions inventory for the Pittsburgh area to a full approval (66 FR 17634). Today, EPA is proposing to approve the 1990 NO_X emission inventory for the Pittsburgh area as submitted by PADEP on March 22, 1996, and supplemented on February 18, 1997.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOC's at a ratio of at least 1.15 to 1.0. The EPA granted limited approval of the Commonwealth's NSR program on December 9, 1997 (62 FR 64722). EPA's sole reason for granting limited approval rather than full approval of Pennsylvania's regulations was that they do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions only apply in nonattainment areas without an approved attainment demonstration (see 40 CFR part 51.165(a)(ii)(C)). The only portion of the Commonwealth

where an attainment demonstration is still required, and has yet to be approved, is the Pennsylvania portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (consisting of Philadelphia, Delaware, Chester, Montgomery, and Bucks counties). Therefore, EPA is also proposing to convert its limited approval of Pennsylvania's NSR program to full approval for the entire Commonwealth, with the exception of the Pennsylvania portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area where it shall, for the time being, retain its limited approval status.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirements to determine conformity applies to transportation plans, programs and projects developed, funded or approved, under title 23 U.S.C. of the Federal Transit Act (''transportation conformity''), as well as to all other Federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate. The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions, to comply with the conformity provision of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the ozone redesignation request for the Pittsburgh area without a fully approved conformity SIP. See Detroit, Michigan, carbon monoxide redesignation published on June 30, 1999 (64 FR 35017), Cleveland-Akron-Lorain ozone redesignation published on May 7, 1996 (61 FR 20458), and Tampa, Florida, published on December 7, 1995 (60 FR 52748). EPA did approve the Commonwealth's general conformity SIP on September 29, 1997 (62 FR 50870).

By proposing approval of the maintenance plan for the Pittsburgh area, EPA is also proposing to approve the Motor Vehicle Emission Budgets (MVEB) contained in that plan adequate for maintenance of the ozone NAAQS. Upon the effective date of the final approval of the maintenance plan for the Pittsburgh area, the MVEB's for both VOC and NO_X contained in the plan shall be the applicable budgets that must be used for purposes of demonstrating transportation conformity. These budgets shall replace the VOC budget of the 15% plan and the so-called ''NO_X Build/No Build Test'' currently being used to demonstrate transportation conformity in the Pittsburgh area.

Subpart 2 Section 182 Requirements. The Pittsburgh area is classified as moderate ozone nonattainment; therefore part D, subpart 2 section 182(b) requirements apply. In accordance with the September 17, 1993 EPA guidance memorandum, the requirements which came due prior to the submission of the request to redesignate the area must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Those requirements are discussed below:

1990 Base Year Inventory. The 1990 base year emission inventory was due on November 15, 1992. PADEP submitted the 1990 base year emission inventory on March 22, 1996 and later supplemented it on February 18, 1997. Today, EPA is proposing approval of the 1990 base year NO_X inventory for the Pittsburgh area submitted by the Commonwealth on March 22, 1996 and supplemented on February 18, 1997. Please note that EPA converted its January 14, 1998 (63 FR 2147) conditional approval of the VOC base year inventory to a full approval on April 3, 2001 (66 FR 17634).

Periodic Emission Inventory. Periodic inventories were required to be submitted on November 15, 1995 and November 15, 1998, providing an estimate of emissions for 1993 and 1996, respectively. This inventory is not considered a SIP requirement for the Pittsburgh area, therefore they do not need to be approved into the SIP. Pennsylvania provided its most recent estimates of emissions for 1999 in this redesignation request and these emissions are summarized in tables provided later in this document.

Emission Statements. Pennsylvania formally submitted an emissions statement SIP on November 12, 1992 and EPA approved it on January 12, 1995 (60 FR 2881).

15% Plan. The 15% ROP plan for VOC reductions was required to be submitted by November 15, 1993, and, therefore is applicable to the Pittsburgh-Beaver Valley moderate ozone nonattainment area. The Commonwealth submitted a 15% plan on March 22, 1996 and EPA granted a conditional approval of the plan on January 14, 1998 (63 FR 2147). PADEP revised its 15 percent plan SIP on July 22, 1998 in order to address the conditions of the January 14, 1998 conditional approval. EPA removed the conditional approval of the Commonwealth's 15 percent plan and converted to a full approval on April 3, 2001 (66 FR 17634).

VOC and NO_X RACT Requirements. SIP revisions requiring reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) All sources covered by a CTG issued prior to November 15, 1990; (3) All other major non-CTG rules were due by November 15, 1992 and apply to the Pennsylvania submittal. The Pennsylvania SIP has approved RACT regulations and requirements for all sources and source categories covered by the CTG's. These are listed in appendix A of the Technical Support Document (TSD) prepared in support of this proposed rulemaking. Copies of the TSD are available, upon request, from the EPA Regional Office listed in **ADDRESSES** section of this document.

On February 4, 1994, PADEP submitted a revision to its SIP to require major sources of NO_X and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_X RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_X is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_X comply with RACT by May 31, 1995. The regulations contain technology-based or operational

''presumptive RACT emission limitations'' for certain major NO_X sources. For other major NO_X sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a ''generic'' RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by-case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_X RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; *or* (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, the PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_X RACT regulations by submitting 485 case-by-case VOC/NO_X RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfies the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties, the limited approval of Pennsylvania's generic VOC and NO_X RACT regulations shall convert to a full approval for the Pittsburgh area. Final action by EPA to approve the redesignation of the Pittsburgh area from nonattainment to attainment may occur only after the Pennsylvania's generic VOC and NO_X RACT regulations are fully approved for that area.

It should be noted that the Commonwealth has adopted and is implementing additional ''post RACT requirements'' to reduce seasonal NO_X emissions in the form of a NO_X cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the Ozone Transport Region. That rule's compliance date is May 1999. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted regulations to satisfy Phase I of the NO_X SIP call and submitted those regulations to EPA for SIP approval. Publication of EPA's rulemaking action on the Commonwealth's NO_X SIP call rule SIP submittal will appear in the **Federal Register** in the near future.

Stage II Vapor Recovery. Section 182(b)(3) requires states to submit Stage II rules no later than November 15, 1992. The Pennsylvania Stage II rules were submitted as a SIP revision on March 4, 1992. The SIP was supplemented on October 16, 1995. EPA approved the Stage II program for the Commonwealth of Pennsylvania on December 13, 1995 (60 FR 63940).

Enhanced Vehicle Inspection and Maintenance (I/M). Pennsylvania submitted its enhanced I/M SIP to EPA on March 22, 1996. EPA granted conditional interim approval of the Commonwealth's enhanced I/M SIP on January 28, 1997. EPA granted full approval of the Commonwealth's enhanced I/M program on June 17, 1999 (64 FR 32411).

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, Federal Measures, and other state adopted measures. The improvement in air quality in the Pittsburgh area is due to emissions reductions from reductions in point, stationary, area, and mobile sources. Point source reductions are due to implementation of RACT, additional NO_X controls, 111(d) plans and National Emission Standards for Hazardous Air Pollutants (NESHAPS) which reduce VOCs, Prevention of Significant Deterioration (PSD), and NSR. Additional stationary area source controls were implemented for the following categories: Automobile refinish coatings, consumer products, architectural and industrial maintenance coatings, wood furniture coatings, aircraft surface coating, marine surface coating, metal furniture coating, municipal solid waste landfills, treatment storage and disposal facilities, and Stage II vapor recovery. Several programs were implemented to reduce highway vehicle emissions, such as the Federal Motor Vehicle Control Program (FMVCP), a Pittsburgh-specific summertime gasoline 7.8 psi volatility limit, and enhanced I/M. Nonroad source programs include Federal rules for large and small compression-ignition engines, small spark-ignition engines, and recreation spark-ignition marine engines.

Pennsylvania has satisfied the criteria of section 107(d)(3)(E) that the improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, Federal Measures, and other state adopted measures.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets for the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The EPA memorandum, dated September 4, 1992 from John Calcagni, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The state must show how it will track and verify the progress of the maintenance plan. Finally, the potential contingency measures ensure prompt correction of any violation of the ozone standard.

The PADEP included a 1999 emissions inventory as the attainment inventory. The maintenance plan provides emissions estimates from 1990 to 2011 for VOCs and NO_X (see Tables 1 and 2, below). The emissions in the Pittsburgh area are projected to decrease from the 1999 levels. The results of the analysis show that the Pittsburgh area is expected to maintain the air quality

standard for at least 10 years into the future after redesignation.

TABLE 1.—VOC EMISSIONS FROM 1999 TO 2011 IN THE PITTSBURGH AREA

Major source category	1999 attainment	2007 projected	2011 projected
Point sources	34	36	38
Stationary Area Sources	130	136	142
Highway Vehicles	110	98	102
Nonroad Engines/Vehicles	64	42	37
Total	338	313	319

TABLE 2.—NO_X EMISSIONS FROM 1999 TO 2011 IN THE PITTSBURGH AREA

Major source category	1999 attainment	2007 projected	2011 projected
Point sources	282	199	199
Stationary Area Sources	10	10	10
Highway Vehicles	171	129	115
Nonroad Engines/Vehicles	75	67	60
Total	538	405	384

The Commonwealth's plan commits to continue the operation of the monitors in the area in accordance with 40 CFR part 58. The Commonwealth's plan also states that it will track maintenance by reviewing the air quality and emissions data during the maintenance period. As stated earlier, the plan also includes motor vehicle emission budgets to be used for transportation conformity purposes for the Pittsburgh area upon the effective date of the final approval of the maintenance plan.

The contingency plan for the Pittsburgh area consists of attainment tracking and contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the Pittsburgh area. Two measures of attainment tracking will be utilized in the Pittsburgh area: (1) air quality monitoring using the existing ozone monitoring network, and (2) inventory updates on a regular schedule. Stationary, mobile, and area source inventories will be updated a minimum of once every three years beginning in 2002. The inventories will be assessed by comparison with the 1999 maintenance inventory to ensure that the emissions do not exceed the attainment year inventory by more than 10 percent. The Commonwealth will develop periodic emissions inventories (every 3 years) beginning in 2002 and will evaluate these inventories relative to the 1999 baseline to assess whether further controls are needed.

The contingency measures included in the plan to be considered for implementation for the Pittsburgh area are four VOC model rules currently being considered as additional measures for the Philadelphia Ozone Nonattainment area. The rules are part of a recent Memorandum of Understanding (MOU) and resolutions signed on March 28, 2001 by the member states of the Ozone Transport Commission (OTC). The VOC rules under consideration have the potential to reduce emissions from consumer products, portable fuel containers, architectural and industrial Maintenance coatings, and solvent cleaning operations.

The Commonwealth's submittal adequately addresses the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and therefore, satisfies the maintenance plan requirement of section 107(d)(3)(E).

The CAA section 175A(b) also requires the PADEP to submit a revision of the SIP eight years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period. The Commonwealth recognizes that it is required to submit such a SIP revision 8 years after this request and maintenance plan are approved.

Proposed Actions

EPA is proposing to redesignate the Pittsburgh area from nonattainment to attainment of the 1-hour ozone NAAQS and is proposing to approve the maintenance plan submitted by the Commonwealth on April 9, 2001. By proposing approval of the Pittsburgh area maintenance plan, EPA is also proposing to approve the MVEBs contained in that plan as adequate for maintenance of the ozone NAAQS and for transportation conformity purposes. EPA is also proposing to approve the 1990 NO_X base year emissions inventory. EPA is also proposing to convert its limited approval of Pennsylvania's NSR program to a full approval for the entire Commonwealth, with the exception of the Philadelphia area where it will retain its limited approval status. Final action by EPA to approve the redesignation of the Pittsburgh area from nonattainment to attainment may occur only after the Pennsylvania's generic VOC and NO_X RACT regulations are fully approved for that area.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. Interested parties should submit comments by June 29, 2001. All interested parties are advised to submit comments at this time as EPA does not intend to extend this comment period or to institute a second comment period.

This redesignation is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the

state's procedures for amending its regulations. If the proposed maintenance plan is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, Pennsylvania will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Pennsylvania and submitted formally to EPA for incorporation into the SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed redesignation and associated maintenance plan will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed redesignation and associated maintenance plan also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This proposed redesignation of the Pittsburgh area from nonattainment to attainment for the 1-hour ozone NAAQS does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 21, 2001

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–13513 Filed 5–29–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010509116–116–01; I.D. 042301B]

RIN 0648–AO87

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Restrictions on Frequency of Limited Entry Permit Transfers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule that would revise restrictions on the frequency and timing of limited entry permit transfers and would clarify NMFS regulatory requirements for transferring limited entry permits. This proposed rule would also update and clarify limited entry program regulations so that they are more readable for the public. This action is intended to propose revisions to the limited entry permit regulations that would better address the needs of the small businesses participating in the Pacific Coast groundfish limited entry fishery.

DATES: Comments must be submitted in writing by June 19, 2001.

ADDRESSES: Send comments to Donna Darm, Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of the environmental assessment/regulatory impact review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Kevin Ford (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: Yvonne.dereynier@noaa.gov, kevin.ford@noaa.gov or Svein Fougner (Southwest Region, NMFS) phone: 562–980–4000; fax: 562–980–4047 and; e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the website of the Office of the Federal Register: http://www.access.gpo.gov/su-docs/aces/aces140.html.

Pacific Coast Groundfish Fishery

This proposed rule would revise the Pacific Coast groundfish fishery limited entry program regulations at 50 CFR part 660 to modify the restriction on frequency and timing of limited entry permit transfers and to update and re-organize the regulations in a manner that is consistent with current NMFS permitting activities and practices. Re-organizing limited entry program regulations would not change the effect or intent of the regulations. This proposed rule is based on recommendations of the Council, operating under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized here. Further detail appears in the EA/RIR prepared by NMFS for this action.

Background

Vessel participation in Pacific Coast groundfish fisheries is constrained in part by a limited entry permit program initially implemented in 1994. Limited entry permits were issued to vessels meeting minimum groundfish landings requirements with trawl, longline, or pot gear during a 1984 through 1988 window period.

Since the implementation of the limited entry program, the Council has made several program changes to further constrain effort in the fleet, including permit combination requirements for larger vessels participating in the fishery and further access limitation for fixed gear vessels targeting sablefish. In 1998, the Council introduced another measure intended to constrain fishing effort, a limitation on the frequency of permit transfers to once every 12 months. The Council also recommended restricting the effectiveness of a permit transfer to the first day of the cumulative limit period following the date of the transfer, to prevent more than one vessel from using that permit during a single period.

Individual vessels do not participate in the groundfish fishery every day of the year. However, with unlimited permit transfers allowed, a vessel might transfer its permit to another vessel when the original vessel is participating in another fishery or when it is undergoing routine maintenance. When unlimited transfers were allowed, effort in the fishery expanded beyond effort levels expected from the number of limited entry permits issued. Therefore, to constrain effort, the Council recommended that a permit could be transferred only once every 12 months.

Under current regulations, a vessel is limited to harvesting a specific amount of groundfish per cumulative limit period (generally 1 or 2 months). If a permit could be transferred to a different vessel in the middle of the cumulative limit period, two vessels could each harvest a cumulative limit, doubling the effort otherwise expected from that permit. Restricting the transfer of permits to the first day of a cumulative limit period was intended to prevent more than one vessel from using a permit to harvest groundfish cumulative limits during a single cumulative limit period. NMFS implemented the Council's recommendations on restricting permit transfers on June 25, 1998 (63 FR 34606).

At its September and November 2000 meetings, the Council reconsidered these transfer restrictions and considered the need to revise and clarify other existing permit regulations. While the Council continued to support restricting the frequency and timing of permit transfers, it wanted to find a way to increase regulatory flexibility for permit holders without losing the benefits from the limitations on the number of vessels that may be attached to a permit in any 1-year or cumulative limit period. To provide this flexibility, the Council recommended restricting the frequency of limited entry permit transfers to once per calendar year, rather than once every 12 months. The Council also recommended a slight modification to permit transfer regulations, to clarify that permit transfers will be effective no sooner than the first day of a cumulative limit period after the signed permit transfer form and the original permit are submitted to the agency. This change would give an owner enough time to complete the application package, even if the owner does not have all necessary documents before the start of the cumulative limit period. This change would still ensure that the permit cannot be used by two vessels during the same cumulative limit period.

Since the transfer rule's implementation in 1998, the restriction on frequency and timing of limited entry permit transfers has applied to permit owners changing the vessel registered to the permit and to permit owners changing the name of the person(s) owning or leading the permit without changing the vessel registration. This restriction has adversely affected some permit-owning individuals, corporations and partnerships. In recent years, some entities owning limited entry permits have merged, reorganized, added a partner, or incorporated, but have kept the permit on the same vessel. Such transactions occur in the normal course of business and do not affect fishery participation levels, but are counted against the one time transfer rule. Any change in permit ownership structure limited the permit owner from making additional changes for a period of 12 months, such as adding a new vessel to the permit and/or leasing the permit to another person or entity. In an increasingly uncertain and depressed fisheries business environment, permit holders need greater latitude in using their permits where that flexibility will achieve the original purpose of the regulation.

When NMFS learned that the Council was considering changes to the limited entry permit regulations, the agency asked for a Council recommendation for NMFS to revise and clarify the overall limited entry program regulations. Since the 1994 implementation of the limited entry program, the Council has recommended numerous regulatory revisions in keeping with the changing needs of the fishery. With each change to the management of the limited entry program, NMFS has revised the appropriate portions of the permit regulations at 50 CFR 660.333 through 660.341. Over time, these revisions, additions and deletions have resulted in a somewhat confusing and convoluted set of limited entry program regulations.

This proposed rule would modify the limited entry program regulations to remove outdated provisions, rearrange and clarify currently applicable regulations into a more readable and user-friendly format, and incorporate the new Council recommendations on the frequency and timing of permit transfers. Clarifications of existing requirements include: revising the definition of ''lessee'' to specify that lessees do not have the right to transfer permits; revising the prohibition against operating a limited entry vessel without a limited entry permit so that the prohibition is clear without needing reference to other regulations; rearranging the limited entry program regulations into a more logical format; removing permit regulations that deal with permit applications that are no longer accepted; and clarifying documentation needs for the different permit action requests that permit

owners make to the Fisheries Permits Office.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

A fish-harvesting business is considered a ''small'' business by the SBA if it has annual receipts not in excess of $3.0 million. It is the limited entry fleet that would be affected by this action, and almost all limited entry permit holders are considered small businesses under SBA standards. Overall, this is a minor action that increases business flexibility for limited entry permit holders. This action is not expected to have any negative effect, and would positively benefit limited entry permit holders by: allowing them the flexibility to plan permit transfers in accordance with changes in seasonal management; improving the clarity and usability of limited entry permit regulations; and increasing their flexibility in making changes and corrections in permit ownership documentation.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 21, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, the definition for ''Permit lessee'' is revised to read as follows:

§ 660.302 Definitions.

* * * * *

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion of those rights to the permit owner. A permit lessee does not have the right to transfer a permit or change the ownership of the permit.

* * * * *

3. In § 660.306, paragraph (n) is revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(n) Fail to carry onboard a vessel the limited entry permit registered for use with that vessel, if a limited entry permit is registered for use with that vessel.

* * * * *

4. Sections 660.333 through 660.335 are revised to read as follows:

§ 660.333 Limited entry fishery—eligibility and registration.

(a) *General.* In order for a vessel to participate in the limited entry fishery, the vessel owner must hold (by ownership or lease) a limited entry permit and, through SFD, must register that permit for use with his/her vessel. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. A limited entry permit confers a privilege of participating in the Pacific Coast limited entry groundfish fishery in accordance with Federal regulations in 50 CFR part 660.

(b) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold a limited entry permit.

(c) *Registration.* Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. If the permit will be used with a vessel other than the one registered on the permit, the permit owner must register that permit for use with the new vessel through the SFD. The reissued permit must be placed on board the new vessel in order for the vessel to participate in the limited entry fishery.

(1) Registration of a permit to be used with a new vessel will take effect no earlier than the first day of the next major limited entry cumulative limit period following the date of submission of the transfer form and the original permit.

(2) The major limited entry cumulative limit periods will be announced in the **Federal Register** each year with the annual specifications and management measures, or with routine management measures when the cumulative limit periods are changed.

(d) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

(e) *Initial decisions.* SFD will make initial decisions regarding permit endorsements, renewal, replacement, and change in vessel registration. SFD will notify the permit holder in writing with an explanation of any decision to deny a permit endorsement, renewal, replacement, or change in vessel registration. The SFD will decline to act on an application for permit endorsement, renewal, transfer, replacement, or registration of a limited entry permit if the permit is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

§ 660.334 Limited entry permits—Endorsements.

(a) *''A'' endorsement.* A limited entry permit with an ''A'' endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement, except for sablefish harvested north of 36° N. lat. during times and with gears for which a sablefish endorsement is required. See paragraph (d) of this section for provisions on sablefish endorsement requirements. An ''A'' endorsement is transferable with the limited entry permit to another person, or to a different vessel under the same ownership under § 660.335. An ''A'' endorsement expires on failure to renew the limited entry permit to which it is affixed

(b) *Gear endorsements.* There are three types of gear endorsements: trawl, longline and pot (trap). When limited entry permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry permit has one or more gear endorsements. Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish with the gear(s) endorsed on the permit. During the limited entry fishery, permit holders may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is restricted to those vessels with sablefish endorsements,

permit holders may not fish for sablefish with open access gear.

(c) *Vessel size endorsements*—(1) *General.* Each limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(ii) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size that results from the combination of the permits as described in paragraph (c)(2)(iii) of this section.

(2) *Limitations of size endorsements*—(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under § 660.335(b) or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under § 660.335(b) or a change in the size endorsement under paragraph (c)(1)(i) of this section.

(iii) The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(d) *Sablefish endorsement and tier assignment*—(1) General Participation in the limited entry fixed gear sablefish fishery during the ''regular'' or ''mop-up'' season described in § 660.323 (a)(2)(iii) and (v) north of 36° N. lat., requires that an owner of a vessel hold a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. During a period when the limited entry sablefish fishery is restricted to those limited entry vessels with sablefish endorsements, a vessel with a longline or pot limited entry permit but without a sablefish endorsement, cannot be used to harvest sablefish in the open access fishery, even with open access gear. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(i) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(ii) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(2) *Issuance process for sablefish endorsements and tier assignments.* (i) No new applications for sablefish endorsements will be accepted after November 30, 1998.

(ii) The SFD will notify each owner of a limited entry permit with a sablefish endorsement, by letter of qualification status, of the tier assignment for which his or her permit qualifies, as indicated by PacFIN records. The SFD will also send to the permit owner a tier assignment certificate.

(iii) If a permit owner believes there is sufficient evidence to show that his or her permit qualifies for a different tier than that listed in the letter of qualification status, that permit owner must, within 30 days of the issuance of the SFD's letter of qualification status, submit information to the SFD to demonstrate that the permit qualifies for a different tier. Section 660.333(d) sets out the relevant evidentiary standards and burden of proof.

(iv) After review of the evidence submitted under paragraph (d)(2) of this section, and any additional information the SFD finds to be relevant, the SFD will issue a letter of determination notifying a permit owner of whether the evidence submitted is sufficient to alter the initial tier assignment. If the SFD determines the permit qualifies for a different tier, the permit owner will be issued a revised tier assignment certificate once the initial certificate is returned to the SFD for processing.

(v) If a permit owner chooses to file an appeal of the determination under paragraph (d)(3) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter of determination (at paragraph (d)(3) of this section). The appeal must be in writing and must allege facts or circumstances, and include evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340(e).

(vi) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(e) *Endorsement restrictions.* ''A'' endorsements, gear endorsements, sablefish endorsements, and sablefish tier assignments may not be transferred separately from the limited entry permit.

§ 660.335 Limited entry permits— renewal, combination, change of permit ownership or permit holdership, and transfer.

(a) *Renewal of limited entry permits and gear endorsements.* (1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by SFD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(3) Limited entry permit renewal requests received in SFD between November 30 and December 31 will be effective on the date that the renewal is approved. A limited entry permit that is allowed to expire will not be renewed unless the permit owner requests reissuance by March 31 of the following year and the SFD determines that failure to renew was proximately caused by illness, injury, or death of the permit owner.

(b) *Combining limited entry permits.* Two or more limited entry permits with ''A'' gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement as described in § 660.334(c)(2)(iii). With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest

cumulative landings limit of the permits being combined.

(c) *Changes in permit ownership and permit holder*—(1) *General.* The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. If the listing of the permit holder changes from one person to a different person, but the vessel registration remains the same on a permit, the permit owner shall submit to SFD an application requesting a change in a permit holder (i.e., lessee of permit). Such applications shall be made to SFD in advance of the date the permit holder wishes to participate in the limited entry fishery. Permit holders cannot expect to have their applications approved immediately upon submission.

(2) *Effective date.* The change in ownership of the permit or change in the permit holder will be effective on the day the change is approved by SFD, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (d) of this section.

(d) *Changes in vessel registration—transfer of limited entry permits and gear endorsements*—(1) *General.* A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (e) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel.

(2) *Application.* A complete application must be submitted to SFD in order for SFD to review and approve a change in vessel registration. At a minimum, permit owners seeking to transfer a limited entry permit shall submit to SFD a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to participate. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. SFD will not approve a change in vessel registration (transfer) until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

(3) *Effective date.* Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. Transfers of permits designated as participating in the ''B'' platoon will become effective no sooner than the first day of the next ''B'' platoon major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel and the permit is in the possession of the new permit holder.

(e) *Restriction on frequency of transfers.* Limited entry permits may not be registered for use with a different vessel (transfer) more than once per calendar year, except in cases of death of a permit holder or if the permitted vessel is totally lost as defined in § 660.302. The exception for death of a permit holder applies for a permit held by a partnership or a corporation if the person or persons holding at least 50 percent of the ownership interest in the entity dies.

(1) A permit owner may designate the vessel registration for a permit as ''unidentified'', meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as ''unidentified''.

(2) When a permit owner requests that the permit's vessel registration be designated as ''unidentified'', the transaction is not considered a ''transfer'' for purposes of this section. Any subsequent request by a permit owner to change from the ''unidentified'' status of the permit in order to register the permit with a specific vessel will be considered a change in vessel registration (transfer) and subject to the restriction on frequency and timing of changes in vessel registration (transfer).

(f) *Application and supplemental documentation.* Permit holders may request a transfer (change in vessel registration) and/or change in permit ownership or permit holder by submitting a complete application form. In addition, a permit owner applying for renewal, replacement, transfer, or change of ownership or change of permit holder of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a tier assignment under § 660.334(d) has the burden to submit evidence to prove that certain qualification requirements are met. The following evidentiary standards apply:

(1) For a request to change a vessel registration and/or change in permit ownership or permit holder, the permit owner must provide SFD with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(2) For a request to change the vessel registration to a permit, the permit holder must submit to SFD a current marine survey conducted by a certified marine surveyor in accordance with USCG regulations to authenticate the length overall of the vessel being newly registered with the permit. Marine surveys older than 3 years at the time of the request for change in vessel registration will not be considered ''current'' marine surveys for purposes of this requirement.

(3) For a request to change a permit's ownership where the current permit owner is a corporation, partnership or other business entity, the applicant must provide to SFD a corporate resolution that authorizes the conveyance of the permit to a new owner and which authorizes the individual applicant to request the conveyance on behalf of the corporation, partnership, other business entity.

(4) For a request to change a permit's ownership that is necessitated by the death of the permit owner(s), the individual(s) requesting conveyance of the permit to a new owner must provide SFD with a death certificate of the permit owner(s) and appropriate legal documentation that either: specifically transfers the permit to a designated individual(s); or, provides legal authority to the transferor to convey the permit ownership.

(5) For a request to change a permit's ownership that is necessitated by divorce, the individual requesting the change in permit ownership must submit an executed divorce decree that awards the permit to a designated individual(s).

(6) Such other relevant, credible documentation as the applicant may submit, or the SFD or Regional Administrator may request or acquire, may also be considered.

(g) *Application forms available.* Application forms for the change in vessel registration (transfer) and change of permit ownership or permit holder of limited entry permits are available from

the SFD (see Table 1, § 600.502 of this chapter for the address of the Regional Administrator). Contents of the application, and required supporting documentation, are specified in the application form.

(h) *Records maintenance.* The SFD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

§ 660.336 [Removed and reserved]

5. Section 660.336 is removed and reserved.

6. Section 660.338 is revised to read as follows:

§ 660.338 Limited entry permits— small fleet.

(a) Small limited entry fisheries fleets that are controlled by a local government, were in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued in accordance with the standards and procedures set out in the PCGFMP and will carry the rights explained therein.

(b) A permit issued under this section may be registered only to another vessel that will continue to operate in the same certified small fleet, provided that the total number of vessels in the fleet does not increase. A vessel may not use a small fleet limited entry permit for participation in the limited entry fishery outside of authorized activities of the small fleet for which that permit and vessel have been designated.

7. Section 660.340 is revised to read as follows:

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, change in vessel registration, change in permit owner or permit holder, and endorsement upgrade, will be made by the Regional Administrator.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the SFD denying issuance, renewal, change in vessel registration, change in permit owner or permit holder, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Administrator.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Administrator seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgment that the confidentiality provisions of the Magnuson-Stevens Act at 16 U.S.C. 1853(d) and part 600 of this chapter are waived with respect to any information supplied by the Regional Administrator to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

[FR Doc. 01–13525 Filed 5–29–01; 8:45 am]

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Notices

Federal Register
Vol. 66, No. 104
Wednesday, May 30, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the subject agencies' intention to request an extension for a currently approved information collection in support of the programs for 7 CFR, part 1955, subpart B, ''Management of Property,'' and 7 CFR, part 1806, subpart A, ''Real Property Insurance.''

DATES: Comments on this notice must be received by July 30, 2001, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Ave. SW, Washington, DC 20250–0523, telephone (202) 690–4012. Electronic mail: phillip_elder@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR, Part 1955–B—Management of Property.

OMB Number: 0575–0110.

Expiration Date of Approval: August 31, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: This regulation prescribes the policies and procedures for the Management of real property which has been taken into custody by the agency after abandonment by the borrower and management of real and chattel property which is in the agency inventory.

Estimate of Burden: Public reporting for this collection of information is estimated to average 28 minutes per response.

Respondents: Individuals or households, businesses or other for profit organizations and farms.

Estimated Number of Respondents: 292.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 292.

Estimated Total Annual Burden on Respondents: 136.

Title: 7 CFR, Part 1806–A—Real Property Insurance.

OMB Number: 0575–0087.

Expiration Date of Approval: September 30, 2001.

Type of Request: Extension of a currently approved information collection.

Abstract: This regulation governs the servicing of property insurance on buildings and land securing the interest of the Farm Service Agency (FSA) in connection with an FSA Farm Loan Program Loan and the Multi-Family Housing Programs of the Rural Housing Service (RHS). The information collections pertain primarily to the verification of insurance on property securing Agency loans. This information collection is submitted by FSA or RHS borrowers to Agency offices. It is necessary to protect the government from losses due to weather, natural disasters, or fire and ensure that hazard insurance requirements are met by loan applicants.

Estimate of Burden: Public reporting for this collection of information is estimated to average 34 minutes per response.

Respondents: Individuals or households, businesses or other for profit organizations and farms.

Estimated Number of Respondents: 8,765.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 8,765.

Estimated Total Annual Burden on Respondents: 4,896.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0045.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the subject agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 10, 2001.

Dawn Riley,

Acting Deputy Under Secretary.

Dated: May 21, 2001.

Thomas Hunt Shipman,

Acting Deputy Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 01–13535 Filed 5–29–01; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Substitution of Donated Beef and Pork With Commercial Beef and Pork

AGENCY: Food and Nutrition Service, USDA

ACTION: Notice.

SUMMARY: This notice announces the Food and Nutrition Service's (FNS) intent to continue a demonstration project to test program changes designed to improve the State processing of donated foods by allowing the substitution of donated beef and pork supplied by the Department of Agriculture (the Department) with commercial beef and pork. FNS is invoking its authority under 7 CFR

250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against the substitution of meat and poultry items and to establish the criteria under which substitution would be permitted. The Department will use the demonstration project results to further examine whether allowing this type of substitution will result in increased processor participation and provide a greater variety of processed end products to recipient agencies in a more timely manner and/or at lower costs.

DATES: The proposals described in this Notice may be submitted to FNS through December 30, 2001. The demonstration project runs until June 30, 2003.

ADDRESSES: Proposals should be sent to Les Johnson, Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center, Room 501, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: David Brothers, Schools and Institutions Branch, at (703) 305–2644.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice has been determined to be not significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22675, May 31, 1984).

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and is thus exempt from the provisions of that Act.

Background

Section 250.30 of the current Food Distribution Program regulations (7 CFR Part 250) sets forth the terms and conditions under which distributing agencies, subdistributing agencies, and recipient agencies may enter into contracts with commercial firms for processing donated foods and prescribes the minimum requirements to be included in such contracts. Section 250.30(t) authorizes FNS to waive any of the requirements contained in 7 CFR Part 250 for the purpose of conducting demonstration projects to test program changes designed to improve the State processing of donated foods.

Current Program Requirements

The State processing regulations at § 250.30(f)(1)(i) currently allow for the substitution of certain donated food items with commercial foods, with the exception of meat and poultry. Section 250.30(g) provides that, when donated meat or poultry products are processed or when any commercial meat or poultry product is incorporated into an end product containing one or more donated foods, all of the processing shall be performed in plants under continuous Federal meat or poultry inspection, or continuous State meat or poultry inspection in States certified to have programs at least equal to the Federal inspection programs. In addition to Food Safety Inspection Service (FSIS) inspection, all donated meat and poultry processing must be performed under Agricultural Marketing Service (AMS) acceptance service grading.

Currently, only a few companies process donated beef and pork. Those processors have stated that the current policy prohibiting the substitution of donated beef and pork reduces the quantity of donated beef and pork they are able to accept and process during a given period. Processors must schedule production around deliveries of the donated beef and pork because those products are highly perishable. Some of the processors must schedule production around deliveries of donated beef and pork for up to 30 States. Vendors do not always deliver donated beef and pork to the processors as scheduled, causing delays in production. These delays may be alleviated if the processors can replace donated beef and pork with their commercial beef and pork.

Demonstration Project

From June 30, 2001 until June 30, 2003, the Department will continue to operate a demonstration project under which it will permit selected processors to substitute donated beef and pork in the State processing program for commercial beef and pork. Processors may submit proposals and be approved to participate in the demonstration project during this time. FNS is invoking its authority under 7 CFR 250.30(t) to waive the current prohibition in 7 CFR 250.30(f)(1)(i) against substitution of beef and pork for purposes of this demonstration project.

The term substitution in 7 CFR 250.3 is defined to mean the replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and equal or better quality.

FNS is soliciting interested beef and pork processors to submit written proposals to participate in the demonstration project. The following basic requirements will apply to the demonstration project:

- As with the processing of donated beef and pork into end products, AMS graders must monitor the process of substituting commercial beef and pork to ensure program integrity is maintained.
- Only bulk beef and pork delivered by USDA vendors to the processor will be eligible for substitution. No backhauled product will be eligible. (Backhauled product is typically frozen beef and pork in 10 pound chubbs delivered to schools which may be sent to processors for further processing at a later time.)
- Commercial beef and pork substituted for donated beef and pork must be certified by an AMS grader as complying with the same product specifications as the donated beef and pork. The age of any commercial product that is used in replacement for donated food may not exceed six months.
- Substitution of commercial beef and pork may occur in advance of the actual receipt of the donated beef and pork by the processor. However, no substitution may occur before the notice to deliver for that processor is issued by USDA. Lead time between the purchase and delivery of donated beef and pork may be up to five weeks. Any variation between the amount of commercial beef and pork substituted and the amount of donated beef and pork received by the processor will be adjusted according to guidelines furnished by USDA.
- Any donated beef and pork not used in end products because of substitution must only be used by the processor in other commercial processed products and cannot be sold as an intact unit. However, it may be used to fulfill other USDA contracts provided all terms of the other contract are met.
- The only regulatory provision or State processing contract term affected by the demonstration project is the prohibition on substitution of beef and pork (section 250.30(f)(1)(i) of the regulations). All other regulatory and contract requirements remain unchanged and must still be met by processors participating in the demonstration project.

The demonstration project will enable FNS to continue to evaluate whether to amend program regulations to allow the substitution of donated beef and pork with commercial beef and pork in the State processing program. Particular attention will be paid to whether such an amendment of the regulations would increase the number of processors participating, and whether it would increase the quantity of donated beef and pork that each processor accepts for processing. Further, FNS will attempt to determine whether the expected increase in competition and the expected increase in the quantity of donated beef and pork accepted for processing will enable processors to function more efficiently, producing a greater variety of processed end products more quickly and/or at lower costs.

Interested processors should submit a written proposal to FNS outlining how they plan to carry out the substitution while complying with the above conditions. The proposal must contain (1) a step-by-step description of how production will be monitored; and (2) a complete description of the records that will be maintained for (a) the commercial beef and pork substituted for the donated beef and pork and (b) the disposition of the donated beef and pork delivered by USDA. All proposals will be reviewed by representatives of the Food Distribution Division of FNS and by representatives of the AMS Livestock Division's Commodity Procurement Branch and Grading Branch. Companies approved for participation in the demonstration project will be required to enter into an agreement with FNS and AMS which authorizes the processor to substitute donated beef and pork with commercial bulk beef and pork in fulfilling any current or future State processing contracts during the demonstration project period. Participation in the demonstration project will not ensure that processors will be awarded any State processing contracts.

Dated: May 23, 2001.

George A. Braley,

Acting Administration, Food and Nutrition Service.

[FR Doc. 01–13520 Filed 5–29–01; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on June 22, 2001 at Harrah's Lake Tahoe Special Event Center, Highway 50, Stateline NV. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held June 22, 2001, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at Harrah's Lake Tahoe Special Event Center, Highway 50, Stateline, NV.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Report on the Federal Interagency Partnership meeting and Forest Service Urban Lot Program; (2) Budget Subcommittee report; (3) Other business; (4) EPA presentation on air quality; (5) public comment; and (6) Environmental Improvement Program implementation. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: May 17, 2001.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 01–13463 Filed 5–29–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 30, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Email *Mclayton@doc.gov.*, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230; Phone number: (202) 482–3526, and fax number: (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. Abstract

Congress, when it enacted legislation to implement the Nairobi Protocol to the Florence Agreement, included a provision for the Departments of Commerce and Treasury to collect information on the import of articles for the handicapped. Form ITA–362P, Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty, is the vehicle by which statistical information is obtained to assess whether the duty-free treatment of articles for the handicapped has had a significant adverse impact on a domestic industry (or portion thereof) manufacturing or producing a like or directly competitive article. Without the collection of data, it would be almost impossible for a sound determination to be made and for the President to appropriately redress the situation.

II. Method of Collection

The Department of Commerce and the U.S. Customs Service have copies of Form ITA–362P and distributes the form

to importers and brokers upon request. Also, Form ITA–362P may be printed from the Statutory Import Programs Staff portion of the Department of Commerce website at www.ita.doc.gov/IAFrameset.html. The importer or its broker normally completes the form, which is included in the Customs entry package. Forms are then forwarded by Customs officials or brokers to the Department of Commerce, which keeps the statistical records.

III. Data

OMB Number: 0625–0118.

Form Number: ITA–362P.

Type of Review: Revision-Regular Submission.

Affected Public: Commercial, non-commercial, and individual importers of articles for the handicapped who wish to receive duty-free entry into the U.S.

Estimated Number of Respondents: 380.

Estimated Time Per Response: 4 minutes.

Estimated Total Annual Burden Hours: 304 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $14,240.00 ($3,040.00 for respondents and $11,200.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–13523 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Continuation of Antidumping Duty Order: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Canned pineapple fruit from Thailand.

SUMMARY: On February 2, 2001, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 (c) of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on canned pineapple fruit (''CPF'') from Thailand would be likely to lead to continuation or recurrence of dumping (66 FR 8777). On May 17, 2001, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (66 FR 27534). Therefore, pursuant to 751(d)(2) of the Act and 19 CFR 351.218(e)(4), the Department is publishing this notice of the continuation of the antidumping duty order on CPF from Thailand.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2000, the Department initiated (65 FR 35604), and the Commission instituted (65 FR 35666), a sunset review of the antidumping duty order on CPF from Thailand, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order revoked. *See* Canned Pineapple Fruit From Thailand; Final Results of Full Sunset Review of Antidumping Duty Order, 66 FR 8777 (February 2, 2001).

On May 17, 2001, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on CPF from Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Canned Pineapple Fruit From Thailand, 66 FR 27534 (May 17, 2001) and USITC Publication 3417 (May 2001), Investigation No. 731–TA–706 (Review).

Scope of the Order

The merchandise covered in the antidumping duty order is CPF from Thailand. CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.,* juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Determination

As a result of the determination by the Department, and the Commission that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on CPF from Thailand. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2006.

Dated: May 23, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–13549 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–836]

Polyvinyl Alcohol From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 22, 2001, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on polyvinyl alcohol from Japan. The review covers Kuraray Co., Ltd., a manufacturer/exporter of the subject merchandise. The period of review is May 1, 1999, through April 30, 2000.

We received no comments from interested parties on our preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for Kuraray Co., Ltd. is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0629 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2000).

Background

The review covers one manufacturer/exporter, Kuraray Co., Ltd. (Kuraray). The period of review (POR) is May 1, 1999, through April 30, 2000.

On January 30, 2001, the Department published in the **Federal Register** the preliminary results of the first antidumping duty administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from Japan (65 FR 11140).

We invited parties to comment on the preliminary results of the review. Neither the petitioner nor Kuraray submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Final Results of the Review

Neither party submitted comments or additional information for consideration in the final results. Our final results remain unchanged from the preliminary results. The following weighted-average margin percentage remains for Kuraray for the period May 1, 1999, through April 30, 2000, is 4.87 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PVA from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Kuraray will be the rate shown above;(2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 77.49 percent. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 (a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221.

Dated: May 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–13548 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institutes of Standards and Technology

[Docket No. 001214352–0352–01]

RIN 0693–AB34

Announcing Draft Federal Information Processing Standards (FIPS) 180–2, Secure Hash Standard, and Request for Comments

AGENCY: National Institutes of Standards and Technology (NIST), Commerce.

ACTION: Notice, request for comments.

SUMMARY: This notice announces Draft Federal Information Processing Standard (FIPS) 180–2, Secure Hash Standard (SHS), for public review and comment. The draft standard, designated ''Draft FIPS 180–2,'' is proposed to supersede FIPS 180–1.

Published in 1992, FIPS 180–1 specified that the standard be reviewed within five years. The standard specifies a secure hash algorithm, designated SHA–1, which produces a 160-bit output called a message digest. To provide for comparability with the anticipated increase in security to be afforded by the use of the Advanced Encryption Standard (currently under development), NIST is proposing the expansion of the hash standard to include additional algorithms that produce a 256-bit, 384-bit, and 512-bit message digest. The proposed standard is available at http://www.nist.gov/sha.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential that consideration is given to the needs and views of the public, users, the information technology industry, and Federal, State, and local government organizations. The purpose of this notice is to solicit such views.

DATES: Comments must be received on or before August 28, 20001.

ADDRESSES: Written comments may be sent to: Chief, Computer Security Division, Information Technology Laboratory, Attention: Comments on Draft FIPS 180–2, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Electronic Comments may be sent to: Proposed 180–2@nist.gov.

The current FIPS 180–1 and its proposed replacement, Draft FIPS 180–2, are available electronically at http://www.nist.gov/sha.

Comments received in response to this notice will be published electronically at http://www.nist.gov/sha.

FOR FURTHER INFORMATION CONTACT: Elaine Barker, Computer Security Division, National Institutes of Standards and Technology, Gaithersburg, MD 20899–8930, telephone (301) 975–2911, e-mail: elaine.barker@nist.gov.

SUPPLEMENTARY INFORMATION: FIPS 180–1, Secure Hash Standard, issued in 1995, specifies a secure has algorithm, designated SHA–1, for computing a condensed representation of a message or a data file. When a data is input, the SHA–1 produces a 160-bit output called a message digest. The message digest can then be used as input to a digital signature algorithm that generates or verifies the digital signature for a message. Other uses of a message digest include the generation of random numbers and keyed hash message authentication codes.

As technology advances, the input parameters used by signature algorithms must be increased to provide adequate security. One of these inputs is the message digest. Therefore, as part of the five-year review of the hash standard, Draft FIPS 180–2 proposed additional has algorithms with outputs of 256-bit, 384-bit and 512-bits. The additional algorithms will produce outputs that will provide security comparable to that projected for the Advanced Encryption Standard.

Authority: NIST's activities to develop computer security standards to protect Federal sensitive (unclassified) systems are undertaken pursuant to specific responsibilities assigned to NIST in Section 5131 of the Information Technology Management Reform Act of 1996 (P.L. 104–106), the Computer Security Act of 1987 (P.L. 100–235), and Appendix III to Office of Management and Budget Circular A–130.

Executive Order 12866: This notice has been determined to be non-significant for the purposes of Executive Order 12866.

Dated: May 21, 2001.

Karen H. Brown,

Acting Director, NIST.

[FR Doc. 01–13522 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050701A]

Small Takes of Marine Mammals Incidental to Specified Activities; Shallow-Water Hazard Activities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from BP Exploration (Alaska), Inc; ExxonMobil Production Co, a division of Exxon Mobil Corporation; and Phillips Alaska, Inc. (BP/EM/PAI), working as members of a study team referred to in their application as the North American Natural Gas Pipeline Group (NANGPG), for an authorization to take small numbers of marine mammals by harassment incidental to conducting shallow hazard surveys in the central and eastern Alaskan Beaufort Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize BP/EM/PAI to incidentally take, by harassment, small numbers of bowhead whales and other marine mammals in the U.S. Beaufort Sea during the open water period of 2001.

DATES: Comments and information must be received no later than June 29, 2001.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055, ext 128; Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified

geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 20, 2001, NMFS received an application from BP/EM/PAI requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting shallow hazards surveys during the open water season in the Beaufort Sea between Prudhoe Bay, Alaska and the United States/Canadian border. Weather permitting, the survey is expected to take place between approximately July 20 and September 1, 2001. A more detailed description of the work proposed for 2001 is contained in the application (NANGPG, 2001) which is available upon request (see **ADDRESSES**).

BP/EM/PAI plan to conduct a nearshore shallow hazards survey along a proposed natural gas pipeline route in the central and eastern Alaskan Beaufort Sea during the 2001 open-water season. The primary purpose of the survey is to acquire detailed data on sea bottom and sub-bottom characteristics to support pipeline route selection, pipeline design, safe pipeline operation, and acquisition of pipeline right-of-way permits and a Federal Energy Regulatory Commission Certificate of Convenience and Public Necessity. A secondary purpose of the survey is to locate and document areas of potential archaeological significance along the proposed pipeline route as required by the Minerals Management Service (MMS) and other regulations. Two vessels will conduct the planned geophysical survey activities. In addition, a smaller support vessel will be used for resupply to enable the survey to be completed expeditiously. Water depths within the proposed pipeline route range from 20-60 ft (6.1-18.3 m).

The primary activity planned under this proposed incidental harassment authorization is a high-resolution shallow hazards pipeline route survey along a 500-m (1640-ft) wide strip from Prudhoe Bay to the Alaska/Canada border. This work would likely occur preceding the period when hunters from Nuiqsut and Kaktovik hunt for bowheads (usually between September 1st and October 15th). The shallow hazards surveys will involve the use of acoustic energy sources of substantially lower power than airgun arrays used during marine seismic surveys. The acoustic recording of received signals from one of the shallow hazards sources will be accomplished using a mini-streamer hydrophone array towed by the source vessel.

To increase the probability of completing the survey in a single open-water season, two vessels will be used. One vessel will acquire sub-bottom data using piezoelectric and electromagnetic sub-bottom profiling systems along with side-scan sonar and single-beam bathymetric sonar (sub-bottom vessel). A second vessel will be devoted to seabottom survey activities, and will operate side scan sonar, single-beam bathymetric sonar, and multi-beam bathymetric sonar (multi-beam vessel). Each vessel will complete one round trip along the pipeline route. The sub-bottom vessel will transit the centerline, a parallel line offset 150 m (492 ft) to one side of the centerline, and cross-tie lines. The cross-tie lines will be spaced approximately 16 km (10 mi) and will be approximately 500 m (1640.4 ft) long. The multi-beam vessel will transit the centerline and a parallel line offset 150 m (492 ft) to the other side of the centerline. In the event that hard-bottom habitat with the potential to meet the Alaska Biological Task Force definition of Boulder Patch is encountered, the survey vessels will circle to the north or south of the planned route in an attempt to better define the sea floor anomaly and to locate an alternate route around the hard-bottom area. The precise bathymetric contour to be surveyed will be determined by BP/EM/PAI later, but BP/EM/PAI has determined that the pipeline corridor will be within the zone where water depth is 20 to 60 ft (6.1 to 18.3 m)(see Figure 1 in BP/EM/PAI's application).

The result of the two-vessel survey will be single coverage of the flanking lines and double coverage of the centerline. Both vessels are expected to operate at a towing speed of 3-5 knots and one will follow the other within a distance of approximately 7.4 km (4.6 mi), although operational considerations may necessitate altering this separation as the survey progresses. It is expected that each one-way survey transit time may take 7 to 10 days, or more, to complete. Wave and ice conditions may affect the specific timing of the survey. The entire shallow hazard survey may take 20 to 40 days.

To conduct the shallow hazards survey, either a boomer or minisparker will be used in addition to a mid-frequency sub-bottom profiler and several high-frequency sonars. The sonars will include a side-scan sonar system, a multi-beam bathymetric sonar system and a single-beam bathymetric sonar system. The boomer or minisparker system would provide a frequency range of about 100 to 2500 Hz, with a typical resolution of one meter. Typical pulse repetition frequencies are one pulse every ½ to 2 seconds. Pulse duration is typically 0.1 to 1.0 milliseconds (ms) and the nominal source level is 203 dB (re 1 uPa (rms)) (200 to 1000 Joules on an energy basis) depending on sub-bottom characteristics. A mid-frequency piezoelectric sub-bottom profiler operating at a range from 2 kHz to 15 kHz range will be used to obtain a high-resolution profile of the shallow sea bottom sediments. Typical pulse frequencies are 10 pulses/sec, with pulse duration between 0.1 and 0.40 ms at an energy level of 200 to 800 Joules. A dual-channel side scan sonar system will be used to acquire continuous images of the sea bottom. The source level for a typical side scan sonar system is approximately 228 dB (re 1 uPa (rms)). The nominal operating frequency will be either 200 or 500 kHz, with a pulse rate of up to 7 pulses per second. Pulse duration could range from 0.01 ms to 0.1 ms. Single-beam bathymetric sonar, operated at a nominal frequency of 200 kHz, will serve as both a backup to the multi-beam system and as a supplemental source of bathymetric data.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996) and is not be repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (Balaena mysticetus), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in NANGPG (2001), NMFS (1999), Western Geophysical (2000) and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Ferrero *et al.* (2000)). Information on cetacean and pinniped hearing can be found in NANGPG (2001) and Richardson *et al.* (1995) and other sources. Please refer to these documents for additional information on marine mammals.

Potential Effects of Underwater Noise on Marine Mammals

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity.

Disturbance by anthropogenic noise is the principal means of taking by this activity. Vessels may provide a potential secondary source of noise. In addition, the physical presence of vessels could also lead to non-acoustic effects on marine mammals involving visual or other cues. For a discussion on the anticipated effects of ships, boats, and aircraft on marine mammals and their food sources, please refer to the application. Information on these effects is preliminarily adopted by NMFS as the best information available on this subject.

The pulsed sounds produced by shallow hazards operations will be detectable to marine mammals some distance away from the area of the activity, depending on ambient conditions and the sensitivity of the receptor (Balla-Holden *et al.*, 1998; Greene, 1998; Burgess and Lawson, 2000). There are no available data on bowhead or beluga reactions to shallow hazards acoustic sources and limited data are available for seals. However, the planned types of shallow hazards and sub-bottom profiling equipment have lower source levels and higher frequencies than airgun arrays or even a single airgun. It is possible that the shallow hazards sources may disturb some marine mammals occurring in the area, but the radius of disturbance is expected to be less than an airgun array.

Whales that are approached by the survey vessels may react to the vessels. Reactions may include temporary interruption of previous activities and localized displacement (Richardson *et al.*, 1985; Richardson and Malme, 1993). However, the reaction to the survey vessels should be reduced because the vessels will be traveling at relatively slow speed.

Permanent hearing damage is not expected to occur during the project. It is not positively known whether the hearing systems of marine mammals very close to a shallow hazards acoustic source would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few meters of the source, depending on the species, the equipment being used, and the marine mammal species involved (Richardson *et al.*, 1995).

Planned monitoring and mitigation measures (described later in this document) however, are designed to detect marine mammals occurring near the shallow hazards sources, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment. Moreover, as bowhead whales are known to avoid an area many kilometers in radius around ongoing seismic operations (Miller *et al.*, 1998, 1999), bowheads will probably also avoid the planned shallow hazards operation, although not at such long range given the much lower level of the emitted sounds. Thus, at least in the case of baleen whales, the animals themselves are expected to remain far enough from a shallow hazards survey operation to avoid any possibility of hearing damage.

Masking effects on marine mammal calls and other natural sounds are expected to be limited in the case of bowhead and gray whales exposed to shallow hazards pulses. Although pulse repetition rates will be high during shallow-hazards surveys, the source levels of those pulses will be considerably lower than during seismic surveys, and there will be little overlap in frequency with the predominant frequencies in bowhead calls. This will considerably reduce the potential for masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson, 1986; Greene, 1997; Greene*et al.*, 1999). Bowheads are likely to continue calling in the presence of shallow hazard source pulses as well. In the case of bowhead whales, masking by shallow hazards sources will be limited because of the intermittent nature of shallow hazards survey pulses, their higher frequencies as compared with frequencies of bowhead calls, and their relatively low source levels. Masking effects are more likely to occur in the case of beluga whales, given that sounds important to them are predominantly at higher frequencies, including frequencies produced by some of the shallow hazards sources. However, the offshore distribution of beluga whales and the rapid absorption of high-frequency sound in seawater will limit the exposure of belugas to shallow hazards pulses and thereby limit the likelihood of masking.

Behavioral Reactions of Cetaceans to Disturbance

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, are less

likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening. However, the actual radius of effect of noise on cetaceans is considerably smaller than the radius of detectability (Richardson *et al.*, 1995).

Reactions of cetaceans to a bubble pulser/boomer, minisparker, or sub-bottom profiler have not been reported. The source levels of these devices are lower than the source level of a single airgun whose volume exceeds 10 in3, but the frequency range is broader. Both baleen and toothed whales sometimes move away from medium-frequency sonars and similar sources (Richardson *et al.*, 1995). If these avoidance effects do occur, the avoidance distances are expected to be substantially less (at least for bowhead and gray whales) than avoidance distances around an airgun array as used during seismic surveys. For example, sounds from an airgun array typically are above 160 dB (re 1 uPa (rms)) at distances out to a few kilometers. In contrast, sounds from a mini-sparker, bubble pulser, or sub-bottom profiler, as measured in the Beaufort Sea during 1997 and 2000, diminished below 160 dB within ranges of 155 m (508.5 ft), 22 m (72.2 ft), and less than 77 m (252.6 ft), respectively (Balla-Holden *et al.*, 1998; Burgess and Lawson, 2000). Those studies indicate that, at a range of 2 km (1.2 mi), the received levels would be around 135 dB (re 1 uPa (rms)) for the minisparker and below 120 dB (re 1 uPa (rms)) for the bubble-pulser and sub-bottom profiler. If migrating bowhead whales are as sensitive to these mid-frequency sources as they are to low-frequency pulses from an airgun array, then avoidance might be evident at distances as much as 2 km (1.2 mi), at least at times when the minisparker is in use.

The side-scan, single-beam, and multi-beam sonars to be used in the shallow hazard survey will operate between 100 kHz and 500 kHz. These sounds are at frequencies above the expected hearing range of bowhead and gray whales. The 100 kHz side-scan sonar sounds (but not the 500 kHz sounds) would be within the hearing range of belugas (White *et al.*, 1978; Johnson *et al.*, 1989). Thus with the possible exception of the few belugas that might be exposed to the 100 kHz side-scan, these high-frequency pulses will be inaudible to cetaceans. The probability that belugas will be exposed to the side-scan sonar is low because belugas are infrequent in nearshore waters of the study area. Also, side-scan sonar sounds at 100 kHz will be rapidly absorbed by seawater and will not be detectable at long range. At 100 kHz, there are absorption losses of 36 dB/km (36 dB/0.62 mi) in addition to the usual spreading loss (Richardson *et al.*, 1995).

Behavioral Reactions of Pinnipeds to Disturbance

Reactions of arctic seals to a bubble pulser/boomer or minisparker and/or sub-bottom profiler are not known in any detail. Ringed seals have been noted to react ''vigorously'' to survey vessels when sources were silent, and no seals were seen at distances closer than 70 m (229.6 ft) when sources were on during an earlier shallow hazards survey in the Beaufort Sea. However, it is believed that the seals were reacting more to the small airgun used in that survey, than to the GeoPulse bubble pulser.

The sounds emitted by the side-scan sonar will be largely or entirely inaudible to pinnipeds, as the frequencies (100 and 500 kHz) are well above the effective hearing range of pinnipeds.

Numbers of Marine Mammals Expected to Be Taken

Incidental takes of marine mammals by harassment could potentially occur for the duration of the proposed activity (potentially July through September, 2001) during times when the shallow-hazard acoustic sources would be in operation. Seals are in the area throughout the period; few whales are likely to be in the Alaskan Beaufort Sea before late August.

Based on an analysis provided in its application, BP/EM/PAI estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	Population Size	Harassment Takes in 2001	
		Possible	Prob-able
Bowhead	8,200	.....	.....
160 dB criterion	.....	42	3
2 km criterion	.....	1,601	285
Gray whale	26,000	<10	0
Beluga*	39,258	250	<150
Ringed seal*	1-1.5 million	93	10
Spotted seal*	>200,000	<10	<2
Bearded seal*	>300,000	15	<15

*Some individual seals may be harassed more than once

Effects of Anthropogenic Noise and Other Activities on Subsistence Needs

The disturbance and potential displacement of marine mammals by sounds from shallow hazards activities are the principal concerns related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise. The hunters are concerned about both displacement and skittish whales.

Nuiqsut and Kaktovik are the communities that are closest to the area of the proposed activity. Hunters from both villages harvest bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take two to four whales each season, while Kaktovik typically take 3 bowheads, with 4 bowheads taken when an ''unused strike'' is allocated from another village. Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principal field camp location for Nuiqsut whalers, is located immediately south of the potential pipeline route. Thus, the possibility and

timing of potential shallow hazards activities in the Cross Island area requires BP/EM/PAI to provide NMFS with either a Plan of Cooperation with North Slope Borough residents or measures that have been or will be taken to avoid any unmitigable adverse impact on subsistence needs. BP/EM/PAI's application has identified those measures that will be taken to minimize any adverse effect on subsistence. In addition, the timing of shallow hazards activities will be addressed in a Conflict Avoidance Agreement (CAA) with the Nuiqsut and Kaktovik whalers and the Alaska Eskimo Whaling Commission (NANGPG, 2001). The CAA is described in the BP/EM/PAI application.

The location of the proposed activity is south of the center of the westward migration route of bowhead whales, but there is some overlap. Localized disturbance to bowheads by shallow hazards sources and the vessels that deploy them could occur if the shallow hazards operations continue into the bowhead migration season. The proposed timing of the shallow hazards survey is not expected to overlap with the bowhead hunt at either Kaktovik or Cross Island. However, if the shallow hazards survey does continue into the bowhead migration season, as discussed previously in this document, the radius of potential disturbance will be much smaller than would be the case during a seismic survey, given the much reduced source levels of the sounds used for shallow hazards surveys. Shallow hazards operations are expected to begin in July and be completed by September, depending upon ice conditions. If possible, BP/EM/PAI expects the work to be completed by the end of August. Few bowheads approach the project area before the end of August, and whaling does not normally begin until after September 1. However, the mitigation measure adopted in previous years to restrict operations to areas west of Cross Island during the bowhead hunting season is not possible for this project because nearly all of this survey is located east of Cross Island.

Many Nuiqsut hunters hunt seals intermittently year round. During recent years, most seal hunting has been during the early summer in open water. In summer, boat crews hunt ringed, spotted, and bearded seals. The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island. This area does not overlap with the planned shallow hazards survey area and, therefore, is not expected to influence the seal hunt by Nuiqsut residents.

At Kaktovik, the planned shallow hazards survey during the summer has some potential to influence seal hunting activities, but any effects are expected by BP/EM/PAI to be negligible. During the open water season, both ringed and bearded seals are taken, along with an occasional spotted seal. Given the lower source levels of the shallow hazard sources, their radius of influence on seals is expected to be less than that of an airgun array even after allowing for the potentially greater sensitivity of seals to medium frequency sounds. Therefore, it is unlikely that the shallow hazards survey would have more than a negligible impact on seals or subsistence hunting of seals.

Mitigation

The timing of the shallow hazards survey has been planned by BP/EM/PAI so that most or all of the survey will occur while there are few bowhead whales in the Alaskan Beaufort Sea, and thus would avoid or minimize overlap with bowhead hunting. BP/EM/PAI proposes to complete all three survey segments (centerline, north offset, and south offset) near Cross Island at the beginning of the survey period (July), well in advance of 1 September, 2001.

Safety zones will be established around each of the sources (except the multi-beam source) and monitored by marine mammal observers. Whenever a marine mammal is about to enter the safety zone appropriate for the species, the observer will ensure that each of the sources will be shut-down until the mammal leaves its safety zone. The safety zones proposed for this activity are as follows:

RMS RADII (IN M/FT)

SOURCE	TOW DEPTH (m/ft)	WATER DEPTH (m/ft)	190 dB (Seals)	180 dB (Whales)
Minisparker	0.3/1	-6/20	6/20	18/59
Boomer	0.1/.3	-13/43	<1/<3.3	2/6.6
Sub-bottom profiler	3/10	-13/43	3/10	8/26

Within the first 10 days of the survey's start, BP/EM/PAI will measure and analyze the sounds from the various sources, and, after consultation with NMFS, adjust the proposed safety radii, provided here, as necessary.

During night-time, floodlights may be employed to illuminate the safety zone, and night vision equipment will be available to facilitate observation. It should be noted that marine mammal monitoring will not be required for the multi-beam source vessel, only for the sub-bottom source vessel, since the sonar equipment that the multi-beam vessel will operate will emit sounds outside the frequency range at which those species of seals and whales expected in the area can hear well. Also, consistent with previous shallow hazards surveys, because of the lower-powered sources employed, no ramp-up procedure is proposed to be used for this activity.

Monitoring

The BP/EM/PAI proposes to sponsor marine mammal and acoustical monitoring of its 2001 shallow hazards program. This monitoring is proposed to be similar to monitoring conducted in association with the 1997 and 2000 shallow hazards operations in the Beaufort Sea. BP/EM/PAI has not proposed an aerial monitoring program because the zones of acoustical influence are likely to be significantly smaller than those found for seismic airgun array operations in the Beaufort Sea.

Vessel Monitoring

BP/EM/PAI proposes to have a marine mammal observer aboard the sub-bottom source vessel to search for and observe marine mammals whenever the shallow hazards operations are in progress, and for at least 30 minutes prior to the planned start of operations. A total of 3 observers will be employed, consisting of two qualified biologists and an Inupiat Observer/Communicator with experience in this type of work. They will work in shifts no longer than 4 hours each to minimize observer fatigue. All marine mammal observations and shutdowns will be

recorded in a standardized format, as done in previous shallow hazard surveys.

When mammals are detected within, or about to enter, the safety zone designated to prevent injury to the animals (see Mitigation), the survey crew leader will be notified so that shutdown procedures can be implemented immediately.

Acoustical Monitoring

Acoustical measurements of sounds emitted by the shallow hazards sources will be obtained by vessel-based hydrophones. A vessel-based acoustical measurement program is proposed to be conducted for a few days early in the program. The main objective will be to measure the levels and other characteristics of the horizontally-propagating sound from the bubble-pulser/boomer, minisparker, and sub-bottom profiler. The sources will be measured at various distances and directions from the source. Routine vessel sounds, made by BP/EM/PAI vessels, will also be recorded for any vessels whose sounds have not been recorded previously.

Reporting

BP/EM/PAI will provide an initial report on the 2001 shallow hazards activity to NMFS within 90 days of the completion of the shallow hazards program. This report will provide dates and locations of shallow hazards operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final draft technical report will be provided by BP/EM/PAI within 20 working days of receipt of the document from the contractor, but no later than April 30, 2002. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks and will reflect suggestions and recommendations made during peer review.

Consultation

Under section 7 of the Endangered Species Act (ESA), NMFS is consulting with MMS on the oil and gas exploration and associated activities in the Alaskan Beaufort Sea. This consultation includes a review of seismic and related noise sources used by the oil and gas industry. That consultation will be completed shortly. If the consultation results in a no jeopardy opinion and if an authorization to incidentally harass listed marine mammals is issued under the MMPA for this activity, NMFS will issue an Incidental Take Statement under section 7 of the ESA for the incidental harassment of bowhead whales by the BP/EM/PAI for its proposed activity.

National Environmental Policy Act (NEPA)

In conjunction with the 1996 notice of proposed authorization (61 FR 26501, May 28, 1996) for open water seismic operations in the Beaufort Sea, NMFS released an Environmental Assessment (EA) that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. No comments were received on that document and, on July 18, 1996, NMFS concluded that neither implementation of the proposed authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the Alaskan Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. As a result, the preparation of an environmental impact statement on this action is not required by section 102(2) of NEPA or its implementing regulations.

In 1999, NMFS determined that a new EA was warranted based on the proposed construction of the Northstar project, the collection of data from 1996 through 1998 on Beaufort Sea marine mammals and the impacts of seismic activities on these mammals, and the analysis of scientific data indicating that bowheads avoid nearshore seismic operations by up to about 20 km (12.4 mi). Accordingly, a review of the impacts expected from the issuance of an IHA has been assessed in the EA, and NMFS determined in 1999, that there would be no more than a negligible impact on marine mammals from the issuance of the harassment authorization that year and that there will not be any unmitigable impacts to subsistence communities, provided the mitigation measures required under the authorization were implemented. As a result, NMFS determined in 1999 that neither implementation of the authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in the U.S. Beaufort Sea nor the alternatives to that action would significantly affect the quality of the human environment. Since this proposed action falls into a category of actions that do not individually or cumulatively have a significant impact on the human environment as determined through the 1999 EA, this action is categorically excluded from further NEPA analysis (NOAA NAO 216-6).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting shallow hazards surveys in the Alaskan Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans and pinnipeds. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of shallow hazard survey operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed shallow hazards activity in waters generally too shallow and distant for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals are known to occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the activity area in the Canadian Beaufort Sea until late August/early September, shallow hazard survey activities in the Alaskan Beaufort Sea are not expected to impact subsistence hunting of bowhead whales prior to that date.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BP/EM/PAI and subsistence users.

Also, while shallow hazard surveys in the Alaskan Beaufort Sea has a potential to influence seal hunting activities by residents of Kaktovik, because the zone of influence by shallow hazard survey sources on seals is expected to be small (less than a few hundred meters in diameter), and because the village of Nuiqsut conducts its major sealing during the summer months off the Colville Delta, west of the proposed survey area, NMFS believes that BP/EM/

PAI's shallow hazards survey will not have an unmitigable adverse impact on the availability of ringed, bearded and spotted seals needed for subsistence.

Proposed Authorization

NMFS proposes to issue an IHA to BP/EM/PAI to take certain species of marine mammals incidental to conducting a shallow hazards survey during the 2001 Alaskan Beaufort Sea open water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bowhead whales, beluga whales, ringed seals, bearded seals, and possibly spotted seals and gray whales; would have no more than a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see **ADDRESSES**).

Dated: May 23, 2001.

Wanda L. Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–13524 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

May 23, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 75673, published on December 4, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 23, 2001

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began onJanuary 1, 2001 and extends through December 31, 2001.

Effective on June 1, 2001, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,821,744 dozen.
347/348	2,204,351 dozen.
351/651	405,506 dozen.
443	79,842 numbers.
448	54,264 dozens.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–13479 Filed 5–29–01; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 66, No. 80, Wednesday, April 25, 2001, page 20790

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 7, 2001.

CHANGES IN MEETING: No requests were received from outside participants, therefore, the Commission Hearing on Agenda and Priorities for FY 2003 is canceled.

AGENDA: For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: May 25, 2001.

Sadye E. Dunn,

Secretary.

[FR Doc. 01–13695 Filed 5–25–01; 2:37 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 66, No. 100, Wednesday, May 23, 2001, page 28426.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, May 31, 2001.

CHANGES IN MEETING: The Commission briefing on the Mid-Year Review for fiscal year 2001 is canceled.

AGENDA: For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: May 25, 2001.

Sadye E. Dunn,

Secretary.

[FR Doc. 01–13696 Filed 5–25–01; 2:37 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Supplement Part 219, Small Business Programs and Associated Causes at 252.219; OMB Number 0704–0386.

Type of Request: Extension.

Number of Respondents: 41.

Responses per respondent: 1.

Annual Responses: 41.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 41.

Needs and Uses: This collection of information is necessary to implement the reporting requirements of the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*) and the applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, *et seq.*). DFARS 219.704 and the clause at DFARS 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), require prime contractors to notify the administrative contracting officer of any substitution of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in those subcontracting plans that specifically identify small, small disadvantaged, and women-owned small businesses. Notifications must be in writing and may be submitted in a contractor-specified format.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. David M. Pritzker. Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13458 Filed 5–29–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8 a.m. to 5 p.m. on June 14, 2001, and from 8 a.m. to 5 p.m. on June 15, 2001. The meeting will be held at the Fulton Lane Inn, Charleston, South Carolina. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than May 31, 2001.

Dated: May 10, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13459 Filed 5–29–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Intelligence Needs for Homeland Defense Chemical Panel will meet in closed session on June 5–6, 2001, in Las Vegas, Nevada. This Task Force will consider a broad spectrum of intelligence issues as they relate to chemical warfare issues, from early threat detection to deterrence, through response including attribution.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review and evaluate the Department's ability to evaluate the collection and analysis of target-related information and weapon unique information relative to chemical warfare issues; examine the role of HUMINT against these missions as well as the technology that the HUMINT collectors need to be equipped with; consider strategic indications and warning and tactical warning dissemination and how the two need to be merged; analyze methodology to correlate large data flows spatially temporally and functionally; and assess the robustness of today's intelligence apparatus for coping with these challenges.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: May 10, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13460 Filed 5–29–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Meeting

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: June 13, 2001 from 0830 to 1710.

Place: National Rural Electric Cooperative Association (NRECA), 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA 22203

Matters To Be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of one million dollars will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

Dated: May 10, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–13461 Filed 5–29–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee ACT (P.L. 92–463) announcement is made of the following Study Group Meeting:

Name of Study Group: Asymmetric Study Group.

Date of Meeting: 13 June 2001.

Time of Meeting 0800–1630.

Place of Meeting: Directed Technologies, Inc., 3601 Wilson Boulevard, Suite 650, Arlington, VA 22201, Phone: (703) 243–3383, FAX: (703) 243–2724.

Agenda: The Army Science Board Study Group will conduct a study on ''Asymmetric Threats to Land Based Operations (2015–2020)'' as a means of examining and addressing innovative ways that asymmetric threats can be used to disrupt land based operations in the future. The 1-day meeting will be closed to the public. This meeting will be closed to the public in accordance with Section 552(c) of Title 5, U.S.C. Appendix 2, subsection 10(d). For further information, please contact Ms. Betty LaFavers, Office by the Assistant Secretary of the Army (Acquisition, Logistics and Technology), (703) 695–1683.

Wayne Joyner,

Executive Assistant, Army Science Board.

4th Meeting— ''Asymmetric Threats to Land Based Operations 2015–2020''

Director Technologies, Inc., 3601 Wilson Boulevard, Suite 650, Arlington, VA 22201, 703 243–3383)—Fax 703 243–2724.

Agenda

13 June 2001

0800 Administrative Matters—Co-Chairs
815 Executive Session (Internal Working Sessions)—All
1000 Break
1015 Executive Session (Continued)—ALL
1230 Lunch & Roundtable Discussion
1300 Executive Session (Continued)—ALL
1500 Break
1515 Executive Session—ALL
1630 Ajourn—ALL

[FR Doc. 01–13533 Filed 5–29–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on June 28, 2001, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSC–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 10, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (July 13, 2000, 65 FR 43302).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'date of award of certification of military experience and training'.

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veterans Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are

eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veterans Affairs or who are covered by a Department of Veterans Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal IncomeTax laws and regulations, identifying non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure

could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being for active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and

(2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information which identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owned to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees

who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Public Law 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221. Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6621.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veterans Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–13457 Filed 5–29–01; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will meet to conduct the midterm briefing of the War for People and Professional Development Task Forces to the Chief of Naval Operations. This meeting will consist of discussions relating to Navy strategy for human resources. This meeting will be closed to the public.

DATES: The meeting will be held on Friday, June 8, 2001, from 7:30 a.m. to 8:30 a.m.

ADDRESSES: The meeting will be held at the Office of the Chief of Naval Operations, 2000 Navy Pentagon, Room 4E630, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute information that relates solely to the internal rules and practices of the agency. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in title 5 U.S.C, section 552b(c)(2).

Dated: May 18, 2001.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 01–13462 Filed 5–29–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.282A]

Office of Elementary and Secondary Education; Public Charter Schools Program—Field-Initiated National Activities Projects Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The purpose of the Public Charter Schools Program (PCSP) is to increase national understanding of the charter schools model by providing financial assistance for the planning, program design, and initial implementation of charter schools; evaluating the effects of charter schools; and disseminating information about charter schools and successful practices in charter schools.

Eligible Applicants: State and local educational agencies, public and private nonprofit organizations, institutions of higher education, authorized public chartering agencies, charter school developers, and public schools, including public charter schools. Eligible applicants may also apply as a group, or consortium.

Applications Available: May 30, 2001.

Application packages will be available by mail and electronically on the World Wide Web at the following sites:

http://www.ed.gov/GrantApps
http://www.uscharterschools.org

Deadline for Transmittal of Applications: July 16, 2001.

Estimated Available Funds: $4 million.

Estimated Range of Awards: The size of awards will be commensurate with the nature and scope of the work proposed.

Estimated Average Size of Awards: $200,000-$400,000 per year.

Estimated Number of Awards: 10–20.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 24 months.

Page Limit: The application narrative may not exceed the equivalent of 20 double-spaced pages, with printing on only one side of 8½ x 11-inch paper. Our reviewers will not read any pages of your application that —

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Thus, we will remove all pages in excess of the 20-page narrative maximum or its equivalent.

Note: We have found that reviewers are able to conduct the highest quality review when applications are concise and easy to read. We strongly encourage applicants to use a 12-point or larger size font, one-inch margins at the top, bottom, and both sides, and pages numbered consecutively.

SUPPLEMENTARY INFORMATION: Section 10305 of the ESEA (National Activities) authorizes the Secretary to award grants under the PCSP to carry out national activities. For FY 2001, the Department is holding a grant competition for field-initiated national activities projects. Grants for national activities projects under the PCSP are highly competitive. Strong applications for national activities grants clearly address each of the applicable selection criteria. They make a well-reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed project, and present a project design that is complete, clearly delineated, and incorporates sound implementation methods. In addition, the personnel descriptions included in strong applications make it apparent that the project director, principal investigator, and other key personnel possess training and experience commensurate with their duties.

The project period of the grant may be from one to two years. In the application, the project period should be divided into 12-month budget periods. Each 12-month budget should be clearly delineated and justified in terms of the proposed activities.

Allowable Activities: The following are examples of the types of projects that could be supported with a national activities grant under the PCSP (for the specific national activities authorized under the PCSP, *see* section 10305(a) of the ESEA (20 U.S.C. 8065(a)):

(1) *Access to Federal Funds.* Disseminate information to charter schools about federal programs in which they may be eligible to participate and provide technical assistance to charter schools in applying for federal funds.

(2) *Research.* Conduct evaluations or studies on various issues concerning charter schools, such as student achievement, teacher qualifications and retention, and the demographic makeup (e.g., age, race, gender, disability, limited-English proficiency, and previous public or private school enrollment) of charter school students.

(3) *Technical Assistance and Planning.* Assist charter school developers with all aspects of planning, designing, and implementing a charter school. Some areas in which newly created charter schools face challenges include program design, curriculum development, defining the school's mission, hiring staff, drafting charter applications, student recruitment and admissions, public relations and community involvement, governance, acquiring equipment and services, budget and finances, facilities, assessment and accountability, parental involvement, serving students with disabilities, and collaborating with other entities to provide quality instruction and services.

(4) *Best or Promising Practices.* Disseminate information on best or promising practices in charter schools to other public schools, including charter schools.

(5) *Facilities.* Disseminate information about programs and financial resources available to charter schools for facilities, including information about successful programs and how charter schools can access private capital.

Collaboration: We encourage collaboration in the development of these projects. For example, charter school resource centers may collaborate with successful charter schools to disseminate information about the charter school's program; authorized institutions of higher education may collaborate with authorized public chartering agencies to develop methods for assessing student achievement in charter schools; and charter schools may collaborate with each other to establish networks to address some of the implementation issues facing newly created charter schools.

Selection Criteria: The Secretary uses the selection criteria published in 34 CFR 75.210 to evaluate applications for grants under the field-initiated national activities competition for FY 2001. The application package includes the specific SELECTION CRITERIA and the points assigned to each criterion.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77, 79, 80, 81, 82, 85, 86, 97, and 99. Title X, part C, Elementary and Secondary Education Act of 1965 (ESEA), as amended, 20 U.S.C. 8061–8067.

The following definitions are taken from the PCSP authorizing statute, in title X, part C of the ESEA. They are being repeated in this application notice for the convenience of the applicant.

Definitions

The following definitions apply to this program:

(a) *Charter school* means a public school that

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempted from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals With Disabilities Education Act;

(8) Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless the requirements are specifically waived for the purposes of this program;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law; and

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(b) *Developer* means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(c) *Eligible applicant* means an authorized public chartering agency participating in a partnership with a developer to establish a charter school in accordance with title X, part C of the ESEA.

(d) *Authorized public chartering agency* means a State educational agency, local educational agency, or other public entity that has the authority under State law and is approved by the Secretary to authorize or approve a charter school.

For Applications and Further Information Contact: Donna M. Hoblit, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3C148, Washington, DC 20202–6140. Telephone (202) 205–9178. Internet address: Donna.Hoblit@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed under *For Applications and Further Information Contact*. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8061–8067.

Dated: May 24, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–13551 Filed 5–29–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on August 22, 2000, an arbitration panel rendered a decision in the matter of *Jack Bedikian* v. *California Department of Rehabilitation (Docket No. R–S/98–6).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a) upon receipt of a complaint filed by petitioner, Jack Bedikian.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. If you use a

telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper termination of Mr. Jack Bedikian, a licensed blind vendor, from the Business Enterprise Program of the California Department of Rehabilitation, the State licensing agency (SLA).

A summary of the facts is as follows: Mr. Bedekian (complainant) was a licensed manager under the SLA's Randolph-Sheppard vending facility program. Beginning in 1991, complainant operated a cafeteria and vending machine service at the Worldway Postal Center (Worldway).

The SLA alleged that, starting in 1993, it received complaints from Worldway concerning health and service issues. Specifically, in 1995 the Safety Specialist of the Office of Safety and Health at Worldway, who had the responsibility for investigating health and safety complaints from its employees, requested that the SLA terminate Mr. Bedikian's agreement to operate the facility based on complaints from its employees.

Subsequently, the SLA issued a formal reprimand to complainant allowing 30 days for corrective action. During this time, the SLA alleged that it provided assistance to help complainant correct deficiencies and meet the needs of the customers. The SLA noted some improvement in the cafeteria operation. However, problems concerning bug infestation of food and drink and moldy bread were still being reported to the Safety Specialist.

In September 1997, the SLA and the Safety Specialist from Worldway met again to review the complaints of the employees concerning the freshness of food from both the cafeteria and the vending machines, pricing, and rudeness of staff. Staff of the SLA's Business Enterprise Program subsequently conducted an on-site review of complainant's facility.

On December 11, 1997, the Los Angeles County Health Department requested that complainant close his facility as the result of violations in 17 categories, including unsafe food temperature, handling and storage of food, rodent and insect problems, and improper storage of cooking equipment and supplies. Other physical and structural problems were identified that were the responsibility of Worldway, which initiated corrective action to resolve these problems.

On December 16, 1997, the Los Angeles County Health Department gave complainant conditional approval to reopen the cafeteria and vending machine service serving packaged foods only. Complainant allegedly disregarded this restriction and attempted to serve hot food although hot water for utensil cleaning and hand washing was unavailable. On December 17th, the SLA issued a termination notice to complainant, which was later rescinded upon the SLA's learning of the conditional approval received by complainant to reopen the facility.

The SLA alleged that it continued to receive complaints from Worldway in January 1998. On January 26, 1998, staff of the SLA performed an inspection of complainant's facility and found 24 sanitation deficiencies. Subsequently, on February 5, 1998, complainant was notified of his license termination, removal from the Worldway Postal Center, and his appeal rights.

Complainant requested a full evidentiary hearing on this matter, which was held on March 27, 1998. In a decision dated April 16, 1998, the Administrative Law Judge affirmed the SLA's decision to terminate complainant's license and remove him from the Worldway Postal Center cafeteria and vending machine service. It was this decision that complainant sought to have reviewed by a Federal arbitration panel. An arbitration hearing on this matter was held on August 20, 1999, and a second hearing was held on December 14, 1999.

Arbitration Panel Decision

The central issue before the arbitration panel was whether the actions taken by the California Department of Rehabilitation to terminate the vending license of Mr. Bedikian and remove him from managing the Worldway cafeteria and vending machine service were in accordance with the Act (20 U.S.C. 107 *et seq.*), the implementing regulations (34 CFR part 395), and applicable State rules and regulations.

The panel ruled that complainant was essentially terminated for poor performance in the operation of the Worldway cafeteria and vending machine service.

Based upon the evidence presented, the panel determined that, while complainant was not one of the more successful managers, there was no demonstrable effort by the SLA, other than structural repairs, to assist complainant in correcting problems and keeping the Worldway cafeteria and vending machine service operating. Further, according to the evidence received in the record, the panel determined that the SLA and the postal facility cooperated in the removal of the complainant.

Therefore, the panel ruled that the actions taken by the California Department of Rehabilitation to remove Mr. Bedikian from managing the Worldway cafeteria and vending machine service were not in accordance with the Act, implementing regulations, and State rules and regulations. The law specifically requires the SLA to assist the vendor in all reasonable ways to overcome the problems cited by the Federal facility. The obligation on the SLA is an affirmative obligation, which requires the State to do something affirmatively.

Additionally, the panel agreed that complainant was entitled to compensatory damages for the loss of net profits from his business in 1995 and 1996, as well as attorney's fees and costs totaling $59,570.44. The panel directed the SLA to place the complainant in the next available facility that was likely to generate approximately the same income.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 23, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–13468 Filed 5–29–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, June 21, 2001—5:30 p.m.–9:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order
6:10 p.m. Approve Minutes
6:20 p.m. Presentations, Board Response, Public Comments
8:00 p.m. Subcommittee Reports, Board Response, Public Comments
8:30 p.m. Administrative Issues
9:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at (270) 441–6802.

Issued at Washington, DC on May 23, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–13499 Filed 5–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Intent To Establish the Advisory Board on Electricity

Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015(a), this is notice of intent to establish the Advisory Board on Electricity. This intent to establish follows consultation with the Committee Management Secretariat of the General ServicesAdministration, pursuant to 41 CFR subpart 101–6.10.

The purpose of the Board is to provide the Secretary of Energy and his designee(s) with advice, information, and recommendations on issues, policies, and programs related to the electric utility sector. The Board will: (1) Provide advice to the Department of Energy on electricity policy issues of concern to the Department; (2) advise the Department on supply and delivery systems (generation, transmission, and distribution) issues; (3) provide advice on market structure and barriers to construction of new generation and transmission facilities and make recommendations on policy and Department initiatives with respect to issues identified; (4) advise the Department on coordination of electricity supply and reliability issues and initiatives with appropriate private sector, state, and regional officials, and other stakeholders; and (5) advise the Department on coordinated response in the event of electricity supply emergencies.

Board members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including electric power generators, transmitters, and distributors; state policy officials and regulators; consumers; the environmental community; and others who may significantly contribute to the deliberations of the Board. Advance notice of all meetings of the Board will be published in the **Federal Register**.

The establishment of the Advisory Board on Electricity is essential to the conduct of Department of Energy business and is in the public interest.

Further information regarding this board may be obtained from Lawrence Mansueti, Office of Power Technologies, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, phone (202) 586–9275.

Issued in Washington, D.C. on May 24, 2001

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 01–13516 Filed 5–29–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–423–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 23, 2001.

Take notice that on May 18, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of June 15, 2001:

Eighth Revised Sheet No. 2
Second Revised Sheet No. 500B

Columbia states that it is submitting NTS Service Agreement No. 2001–05–10–0002, which is an agreement for firm transportation service to be provided by Columbia to DPL Energy (DPL Agreement). Service under the DPL Agreement is to commence on June 15, 2001 and continue for a twenty-year term, unless earlier terminated pursuant

to the terms of the DPL Agreement. The DPL Agreement provides for summer only service—June 15, 2001, through September 30, 2001 for the first year, and May 1 through September 30th for subsequent years. The DPL Agreement also provides a pressure commitment. Columbia believes that the DPL Agreement is consistent with its tariff and its pro forma Rate Schedule NTS service agreement and therefore does not constitute a non-conforming service agreement within the meaning of Section 154.1(d) of the Commission Regulations. If the Commission determines that the DPL Agreement is non-conforming, Columbia requests that the Commission issue an order approving the DPL Agreement to be effective June 15, 2001.

Columbia states that copies of its filing and have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–13482 Filed 5–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–7–000]

Transok, LLC; Notice of Settlement Conference

May 23, 2001.

Take notice that a settlement conference will be held on Friday, June 8, 2001, at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–13481 Filed 5–29–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1977–000, et al.]

Idaho Power Company, et al. Electric Rate and Corporate Regulation Filings

May 22, 2001.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER01–1977–000]

Take notice that on May 17, 2001, Idaho Power Company tendered for filing a Notice of Withdrawal of its rate filing of a revised Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Arizona Public Service Company under Idaho Power Company's FERC Electric Tariff, First Revised Volume No. 5, Open Access Transmission Tariff.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER01–1920–001]

Take notice that on May 17, 2001, Idaho Power Company, tendered for filing a revised Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Arizona Public Service Company under its open access transmission tariff in the above-captioned proceeding.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER01–1913–000]

Take notice that on May 17, 2001, Idaho Power Company tendered for filing a Notice of Withdrawal of its rate filing of a revised Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Arizona Public Service Company under Idaho Power Company's FERC Electric Tariff, First Revised Volume No. 5, Open Access Transmission Tariff.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Michigan Electric Transmission Company

[Docket No. ER01–1849–001]

Take notice that on May 17, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a replacement cover sheet (with a corrected Service Agreement designation) for the Service Agreement filed in this docket.

Copies of that filing were served upon those on the official service list in this docket.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Sierra Pacific Power Company, Nevada Power Company

[Docket No. ER01–1527–002 and ER01–1529–002]

Take notice that on May 17, 2001, Sierra Pacific Power Company (SPPC) and Nevada Power Company (NPC) tendered for filing proposed modifications to their respective Market-Based Rate Tariffs. The proposed modifications would reflect the announcement by Sierra Pacific Resources (SPR), the parent company of SPPC and NPC, and Enron Corp., the parent company of Portland General Electric Company (PGE), that they have mutually agreed to terminate SPR's planned acquisition of PGE.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply, Lincoln Generating Facility, LLC

[Docket No. ER01–2060–000]

Take notice that on May 17, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Lincoln Generating Facility, LLC tendered for filing Service Agreement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Lincoln

Generating Facility, LLC offers generation services. Allegheny Energy Supply Lincoln Generating Facility, LLC requests a waiver of notice requirements to make service available as of May 4, 2001 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply, Wheatland Generating Facility, LLC

[Docket No. ER01–2061–000]

Take notice that on May 17, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Wheatland Generating Facility, LLC tendered for filing Service Agreement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Wheatland Generating Facility, LLC offers generation services. Allegheny Energy Supply Wheatland Generating Facility, LLC requests a waiver of notice requirements to make service available as of May 4, 2001 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc., Kansas Gas and Electric Company

[Docket No. ER01–2062–000]

Take notice that on May 17, 2001, Western Resources, Inc. (WR) tendered for filing revised pages 34–42 (Exhibits B, C and D) to its Electric Power, Transmission, and Service Contract with Kansas Electric Power Cooperative Inc. (KEPCo). WR, on behalf of its wholly owned subsidiary the Kansas Gas and Electric Company (KGE), also submitted revised page 31–36 (Exhibits B and C) to KGE's Electric Power, Transmission, and Service Contract with KEPCo.

These revisions are part of WR's annual exhibits filed with the Federal Energy Regulatory Commission. In addition, WR is filing for acceptance the addition of a new interconnect point near Oskaloosa, Kansas. The revised pages and the filing of the interconnect point are proposed to be effective June 1, 2001.

Copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply, Gleason Generating Facility, LLC

[Docket No. ER01–2063–000]

Take notice that on May 17, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Gleason Generating Facility, LLC tendered for filing Service Agreement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Gleason Generating Facility, LLC offers generation services. Allegheny Energy Supply Gleason Generating Facility, LLC requests a waiver of notice requirements to make service available as of May 4, 2001 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Dayton Power and Light Company

[Docket No. ER01–2064–000]

Take notice that on May 17, 2001, The Dayton Power and Light Company (Dayton) tendered for filing a service agreement establishing Detroit Edison and Dynegy Power Marketing as a customer under the terms of Dayton's FERC Electric Tariff, Original Volume No. 10.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Detroit Edison, Dynegy Power Marketing and the Public Utilities Commission of Ohio.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER01–2065–000]

Take notice that on May 17, 2001, Arizona Public Service Company (APS) tendered for filing an Interconnection and Operating Agreement with Pinnacle West Energy for West Phoenix 4 under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Pinnacle West Energy and the Arizona Corporation Commission.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Supply Lincoln Generating Facility, LLC, Allegheny Energy Supply Gleason Generating Facility, LLC, and Allegheny Energy Supply Wheatland Generating Facility, LLC

[Docket Nos. ER01–2066–000, ER01–2067–000 and ER01–2068–000]

Take notice that on May 16, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Lincoln Generating Facility, LLC, Allegheny Energy Supply Gleason Generating Facility, LLC, and Allegheny Energy Supply Wheatland Generating Facility, LLC tendered for filing Notices of Succession to adopt, ratify and make their own, in every respect, all applicable rate schedules and supplements thereto previously filed with the Federal Energy Regulatory Commission by Des Plaines Green land Development L.L.C., Gleason Power I L.L.C., and West Fork Land Development Company, L.L.C., respectively, effective May 4, 2001.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: June 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Electric Company

[Docket No. ER01–2069–000]

Take notice that on May 17, 2001, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy) tendered for filing a Notice of Cancellation of Pennsylvania Electric Company, FERC Electric Tariff No. 1. Penelec requests that cancellation be effective the 1st day of June, 2001.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Metropolitan Edison Company

[Docket No. ER01–2070–000]

Take notice that on May 17, 2001, Metropolitan Edison Company (Met-Ed) (doing business as GPU Energy) tendered for filing a Notice of Cancellation of Metropolitan Edison Company, FERC Electric Tariff No. 2. Met-Ed requests that cancellation be effective the 18th day of May, 2001.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Desert Power, L.P.

[Docket No. ER01–2071–000]

Take notice that on May 17, 2001, Desert Power, L.P. tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Pennsylvania Electric Company

[Docket No. ER01–2072–000]

Take notice that on May 17, 2001, Pennsylvania Electric Company (Penelec) (doing business as GPU Energy) tendered for filing a Notice of Cancellation of Service Agreement No. 8 under FERC Electric Tariff Volume No. 1 between Pennsylvania Electric Company and West Penn Power Company. Penelec requests that cancellation be effective the 1st day of June, 2001.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Jersey Central Power & Light Company

[Docket No. ER01–2073–000]

Take notice that on May 17, 2001, Jersey Central Power & Light Company (Jersey Central) (doing business as GPU Energy) tendered for filing a Notice of Cancellation of Jersey Central Power & Light Company, FERC Electric Tariff No. 1. Jersey Central requests that cancellation be effective the 18th day of May, 2001.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Calhoun Power Company I, LLC

[Docket No. ER01–2074–000]

Take notice that on May 17, 2001, Calhoun Power Company I, LLC (Calhoun), tendered for filing an application for authorization to sell capacity, energy and ancillary services at market-based rates pursuant to Section 205 of the Federal Power Act.

Calhoun also requests that the Commission accept for filing a long-term purchase contract for the sale of energy and capacity from Calhoun to Alabama Power Company as a service agreement under Calhoun's proposed market-based rate tariff.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Idaho Power Company

[Docket No. ER01–2075–000]

Take notice that on May 17, 2001, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company's FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Overton Power District.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER01–2077–000]

Take notice that on May 17, 2001, Delmarva Power & Light Company (Delmarva) tendered for filing an Interconnection Agreement between Delmarva and NRG Energy Center Dover, LLC (NRG Energy). The Interconnection Agreement provides for the interconnection of an electric generating facility owned by NRG Energy with Delmarva's transmission facilities. Delmarva and NRG Energy jointly request a May 18, 2001 effective date.

Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment date: June 7, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Potomac Electric Power Company Conectiv

[Docket No. EC01–101–000]

Take notice that on May 14, 2001, Potomac Electric Power Company (PEPCO), on its own behalf and on behalf of its jurisdictional subsidiaries, and Conectiv, on behalf of its jurisdictional subsidiaries, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a merger of jurisdictional facilities to be accomplished, as individual Conectiv shareholders may elect, by a payment of $25.00 for each share of Conectiv common stock and $21.69 for each share of Conectiv Class A common stock or by the exchange of Conectiv stock for common stock, in amounts to be determined by exchange ratios applicable to the two categories of Conectiv common stock, in New RC Inc., a new holding company which will become the parent of PEPCO and Conectiv.

Copies of the merger application have been served upon the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia, the Applicants' wholesale requirements and interconnection customers, and the PJM–ISO.

Comment date: July 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–13480 Filed 5–29–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

May 23, 2001.

Take notice that the following hydroelectric application has been field with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11993–000.

c. *Date filed:* April 23, 2001.

d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Topaz Dam Hydroelectric Project would be located at the existing Topaz Dam, owned by Douglas County, Nevada, on the West Fork Walker River in Douglas County, Nevada.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11993–000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would consist of: (1) The existing 30-foot-high, 750 foot-long earthfill dam and Topaz Reservoir, with a 4,400-acre surface area at normal elevation 4,967 feet; (2) a 1,000-foot-long, 5-foot-diameter steel penstock; (3) a powerhouse containing two 1.5-megawatt generating units; (4) a 2-mile-long, 15-kV transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 19.71 GWh.

k. A copy of the publication is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–13483 Filed 5–29–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6987–7]

Chesapeake Bay Program FY2002 Request for Proposals

The U.S. Environmental Protection Agency, Chesapeake Bay Program is issuing a request for proposals (RFP) that will further goals of the Chesapeake 2000 agreement. Up to 750,000 dollars may be available for Fiscal Year 2002. The Chesapeake Bay Program is seeking innovative, cost-effective proposals to accomplish the outcomes listed in the RFP. These outcomes were designed to help meet the Chesapeake 2000 goals. Any nonprofit organization, federal, state or local government agency, interstate agency, college or university is eligible to submit proposals in response to the RFP. Funding will be provided to an organization under the authority of Clean Water Act, section 117.

The RFP will be available May 30, 2001 at the following website: *http://www.epa.edu/r3/chespk/* You may receive a paper copy by calling Kim Scalia at 214–814–5421 or by e-mail at *scalia.kim@epa.gov* or by calling Lori Mackey at 410–267–5715 or by e-mail at *mackey.lori@epa.gov*. All proposals must be postmarked by Monday, July 16, 2001. Any late, incomplete, or faxed proposals will not be considered.

Diana Esher,

Acting Director, Chesapeake Bay Program Office.

[FR Doc. 01–13511 Filed 5–29–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–6987–2]

Beaches Environmental Assessment and Coastal Health Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Grants for Development of Coastal Recreation Water Monitoring and Public Notification Under the Beaches Environmental Assessment and Coastal Health Act.

SUMMARY: The Beaches Environmental Assessment and Coastal Health Act (BEACH Act) signed into law on October 10, 2000, amends the Clean Water Act (CWA) to reduce the risk of disease to users of the Nation's recreational waters. The BEACH Act authorizes the U.S. Environmental Protection Agency (EPA) to award program development and implementation grants to eligible States, Territories, Tribes, and local governments to support microbiological testing and monitoring of coastal recreation waters, including the Great Lakes, that are adjacent to beaches or similar points of access used by the public. BEACH Act grants also provide support for development and implementation of programs to notify the public of the potential exposure to disease-causing microorganisms in coastal recreation waters. EPA is now encouraging coastal States and Territories to apply for BEACH Act Grants for Program Development (referred to as Development Grants) to develop effective and comprehensive coastal recreation water monitoring and public notification programs.

DATES: Submit your application on or before July 30, 2001.

ADDRESSES: You must send your application to the appropriate Regional Grant Coordinator listed in this notice under **SUPPLEMENTARY INFORMATION** section VII.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch, 202–260–3754.

SUPPLEMENTARY INFORMATION:

I. Grant Program

What Is the Statutory Authority for the Development Grants?

The statutory authority for BEACH grants section 406(b) of the Clean Water Act as amended by the BEACH Act, Public Law 106–284, 114 Stat. 970 (2000). It provides in part: ''The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.''

What Activities Are Eligible for Funding Under the Development Grants in Fiscal Year 2001?

In Fiscal Year 2001, EPA intends to award grants authorized under the BEACH Act to support the development of coastal recreation water monitoring and public notification programs. The BEACH Act requires EPA to publish performance criteria for monitoring and notification of coastal recreation waters by April 2002. EPA expects to publish performance criteria for implementation of coastal recreation water monitoring and public notification programs in October 2001. In fiscal year 2002 and beyond, if funds are appropriated to support this program, EPA expects to make grants to also support implementation of monitoring and notification programs that are consistent with EPA's performance criteria.

II. Funding and Eligibility

*Who Is Eligible to Apply for Development Grant Funds Under This **Federal Register** Notice?*

Coastal and Great Lake States are eligible for Development Grants to develop and implement monitoring and notification programs. The term ''State'' is defined in section 502 of the Clean Water Act to include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. However, the Trust Territory of the Pacific Islands no longer exists. The Marshall Islands, the Federated States of Micronesia, and Palau, which were previously entities within the Trust Territory of the Pacific Islands, have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing entity and, as such, is no longer eligible to receive grants as a Territory or possession of the United States.

Are Local Governments Eligible for Funding?

The BEACH Act authorizes EPA to make a grant to a local government for implementation of a monitoring and notification program only if, after the 1-year period beginning on the date of publication of performance criteria, EPA determines that the State is not implementing a program that meets the requirements of the statute. EPA expects to publish performance criteria in October 2001, and therefore expects October 2002 as the earliest date for local governments to be eligible for beach grants.

Are Tribal Governments Eligible for Funding?

Section 518(e) of the CWA authorizes EPA to treat eligible Indian tribes in the same manner as States for the purpose of receiving CWA section 406 grant funding. EPA is developing a rule that would establish procedures for Indian tribes to apply for eligibility for funding under the BEACH Act. The rule would contain the statutory criteria for Indian tribes to be treated in the same manner as a State and indicate how a tribe is to apply for such treatment. The rule would facilitate the award of funding to Indian tribes that qualify under this new CWA program. EPA plans to publish the rule as an interim final regulation in the **Federal Register** by the end of this

calendar year. Indian tribes could begin to apply to the appropriate Regional Administrator for treatment in the same manner as a State under the rule as early as 30 days after the publication date. EPA expects to accept grant applications for tribes in Fiscal Year 2002.

How Much Funding Is Available?

For Fiscal Year 2001, EPA expects to award approximately $2 million in Development Grants to eligible States and Territories.

How Will the Funding Be Allocated?

For the first year only, EPA expects to award Development Grants in equal amounts to all eligible States and Territories who apply for funding. EPA selected the equal amount allocation because this is the simplest and quickest way to award grants while being fair to all applicants and avoiding complex allocation formulas. The size of the award will depend on the number of applicants. If all 35 eligible States and Territories apply, the awards are expected to range between $50,000 to $60,000. However, if fewer than 35 States and Territories apply, then the grant awards will be divided among the number of applicants, thus awarding larger grants.

What is the Expected Duration of the Funding and Project Periods?

The expected funding and project period for Development Grants awarded in FY 2001 is one year.

Are Matching Funds Required?

Recipients are not required to provide matching funds for Development Grants awarded under authority of the BEACH Act at this time.

III. Grant Condition

Section 406(c) of the BEACH Act requires that as a condition of receipt of a Development Grant, recipients identify:

(1) lists of coastal recreation waters in the State, including coastal recreation waters adjacent to beaches or similar points of access that are used by the public;

(2) in the case of a State program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) the frequency and location of monitoring and assessment of coastal recreation waters based on: (A) The periods of recreational use of the waters; (B) the nature and extent of use during certain periods; (C) the proximity of the waters to known point sources and nonpoint sources of pollution; and (D) any effect of storm events on the waters;

(4) (A) the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and (B) the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to: (A) the Administrator, in such form as the Administrator determines to be appropriate; and (B) a designated official of the local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;

(6) measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

IV. Additional Eligible Activities

Recipients may use funds for activities in support of developing a beach monitoring and notification program, including:

(1) activities to comply with the grant conditions specified in section III above;

(2) quality assurance and quality control (QA/QC) procedures consistent with the requirements under 40 CFR 31.45; to develop and implement QA/QC practices for environmentally related measurements or data generation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions;

(3) data quality objectives (DQOs), quality assurance project plan (QAPP) and standard operating procedures (SOPs) that clarify study objectives, define the appropriate type of data, and specify tolerable levels of potential decision errors that will be used as the basis for establishing the quality and quantity of data needed to support decisions.

V. Selection Process

What Criteria Will Be Used To Evaluate Applications and Award Development Grants?

Development Grants will be awarded through a non-competitive process by the EPA Regional offices. EPA expects to award grants to all eligible State and Territory applicants that meet requirements of the BEACH Act as described in this notice.

Who Has the Authority To Award Development Grants?

The Administrator has delegated the authority to award Development Grants to the Regional Administrators.

VI. Application Procedure

What Is the Catalog of Federal Domestic Assistance (CFDA) Number for the BEACH Program Development Grant?

The number assigned to the Development Grants is 66.472, Program Code CU.

May the Development Grants Be Included as Part of the Performance Partnership Grants Program?

For Fiscal Year 2001, Development Grants cannot be included in a Performance Partnership Grant.

What Are the Components of the Application Package?

The application package should contain completed EPA SF–424 Application for Federal Assistance and be submitted to the appropriate EPA Regional Office by July 30, 2001. Contact the appropriate EPA Regional Office for a complete application package. See section VII for a list of EPA Regional Grant Coordinators or visit the Beach Watch Website at *www.epa.gov/ost/beaches* on the Internet.

What Regulations Will Govern the Award and Administration of Development Grants?

Development Grants will be awarded and administered according to the regulations at 40 CFR part 31 (''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'').

Will Quality Assurance and Quality Control (QA/QC) and Other Procedures Be Required for Application?

No. A QA/QC plan is not required for the application, however under 40 CFR 31.45 a QA/QC plan is required for any environmentally related measurements or data generation (e.g. monitoring) performed under the grant. (See section IV of this document).

Will There Be Reporting Requirements?

Recipients must submit annual performance reports on the progress of the program development, as required in sections 31.40 and 31.41.

VII. Grant Coordinators

Grant Coordinators:

Headquarters—Washington DC

Charles Kovatch USEPA, 1200 Pennsylvania Ave. NW—4305, Washington DC 20460; T:202–260–3754; F: 202–260–9830; *kovatch.charles@epa.gov*

Region I—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island

Matt Liebman USEPA Region 1, One Congress St. Ste. 1100—CWQ, Boston, MA 02114–2023; T:617–918–1626; F: 617–918–1505; *liebman.matt@epa.gov*

Region II—New Jersey, New York, Puerto Rico, U.S. Virgin Islands

Richard Coleates USEPA Region 2, 2890 Woodbridge Ave. MS220, Edison, NJ 08837–3679; T: 732–321–6662; F: 732–321–6616; *coleates.richard@epa.gov*

Region III—Delaware, Maryland, Pennsylvania, Virginia

Nancy Grundahl USEPA Region 3, 1650 Arch Street 3ES10, Philadelphia, PA 19103–2029; T: 215–814–2729; F:215–814–2782; *grundahl.nancy@epa.gov*

Region IV—Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina

Joel Hansel USEPA Region 4, 61 Forsyth St. 15th Floor, Atlanta, GA 30303–3415; T: 404–562–9274; F: 404–562–9224; *hansel.joel@epa.gov*

Region V—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Holly Wirick USEPA Region 5, 77 West Jackson Blvd. WT–16J, Chicago, IL 60604–3507; T: 312–353–6704; F: 312–886–0168; *wirick.holiday@epa.gov*

Region VI—Louisiana, Texas

Mike Schaub USEPA Region 6, 1445 Ross Ave. 6WQ-EW, Dallas, TX 75202–2733; T: 214–665–7314; F: 214–665–6689; *schaub.mike@epa.gov*

Region IX—American Soma, Commonwealth of the Northern Mariana Islands, California, Guam, Hawaii

Terry Fleming USEPA Region 9, 75 Hawthorne St. WTR–2, San Francisco, CA 94105; T: 415–744–1939; F: 415–744–1078; *fleming.terrence@epa.gov*

Region X—Alaska, Oregon, Washington

Pat Cirone USEPA Region 10, 120 Sixth Ave. OW–134, Seattle, WA 98101; T: 206–553–1597; F: 206–553–0165; *cirone.patricia@epa.gov*

Dated: May 22, 2001.

Diane C. Regas,

Acting Assistant Administrator of Water.

[FR Doc. 01–13509 Filed 5–29–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34225E; FRL–6785–2]

Diazinon; Receipt of Requests for Amendments and Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The companies that manufacture diazinon [O,O-diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate] for formulation of pesticide products containing diazinon have asked EPA to cancel their manufacturing-use product registrations. In addition, these companies have asked EPA to cancel or amend their registrations for end-use products containing diazinon to delete all indoor and certain agricultural uses. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests. These requests for voluntary cancellation were submitted to EPA in February and March 2001. EPA intends to grant the requested cancellations and amendments to delete uses. EPA also plans to issue a cancellation order for the deleted uses and the canceled registrations at the close of the comment period for this announcement. Upon the issuance of the cancellation order, any distribution, sale, or use of diazinon products listed in this notice will only be permitted if such distribution, sale, or use is consistent with the terms of that order.

DATES: Comments on the requested amendments to delete uses and the requested registration cancellations must be submitted to the address provided below and identified by docket control number OPP–34225E. Comments must be received on or before June 29, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225E in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Ben Chambliss, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8174; fax number: (703) 308–7042; e-mail address: chambliss.ben@epa.gov.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. The first part contains general information. The second part addresses the registrants' requests for registration cancellations and amendments to delete uses. The third part proposes existing stocks provisions that will be set forth in the cancellation order that the Agency intends to issue at the close of the comment period for this announcement.

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use diazinon products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment

for diazinon, go to the Home Page for the Office of Pesticide Programs or go directly http://www.epa.gov/pesticides/op/diazinon.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34225E. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225E in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submission will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34225E. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In separate letters dated February 20, 2001, for Aventis Environmental Science, March 6, 2001, for Drexel Chemical Company and April 26, 2001, for Gowan Company, manufacturers of manufacturing-use-products (MUPs) and registrants of pesticide products containing diazinon, requested cancellation of all indoor and certain agricultural uses from their diazinon products to reduce the potential exposure to children associated with diazinon containing products. The letters, with the exception of the letter from Aventis, also requested that EPA cancel their registrations for manufacturing-use pesticide products containing diazinon, conditioned upon issuance of replacement registrations which do not allow their use in formulation of end-use products for the deleted uses. The letter from Aventis Environmental Science requested cancellation of products without issuance of replacement registrations. EPA has acted on the requests and has issued new registrations in March and May 2001. In addition, these companies have asked EPA to cancel or amend their registrations for end-use products containing diazinon consistent with the use cancellation request. In a letter dated February 8, 2001, Prentiss Incorporated, the other maker of diazinon MUPs, stated that all of their diazinon MUPs have been voluntarily canceled through non-payment of maintenance fees and are not included in this notice. Syngenta Crop Protection, Inc., in letters dated January 15, 2001 and February 16, 2001, also requested voluntary cancellation of two end-use products (diazinon 4E insecticide and evict indoor/outdoor WBC) which Syngenta previously submitted to be amended. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is announcing the Agency's receipt of these requests from the registrants. With respect to the registration amendments, the companies have asked EPA to amend end-use product registrations to delete all indoor uses and certain agricultural uses which are in the list below:

Indoor uses. Pet collars, or inside any structure or vehicle, vessel, or aircraft or any enclosed area, and/or on any contents therein (except mushroom houses), including food/feed handling establishments, greenhouses, schools, residences, museums, sports facilities, stores, warehouses, and hospitals.

Agricultural uses. Alfalfa, bananas, Bermuda grass, dried beans, dried peas, celery, red chicory (radicchio), citrus, clover, coffee, cotton, cowpeas, cucumbers, dandelions, forestry, (ground squirrel/rodent burrow dust stations for public health use), kiwi, lespedeza, parsley, parsnips, pastures, peppers, potatoes (Irish and sweet), sheep, sorghum, squash (winter and summer), rangeland, Swiss chard, tobacco, and turnips (roots and tops).

B. Requests for Voluntary Cancellation of Manufacturing-Use Products

Pursuant to FIFRA section 6(f)(1)(A), Gowan Company and Drexel Chemical Co. have submitted requests for voluntary cancellation of registrations for their MUPs conditioned upon issuance of replacement registrations which do not allow their use in formulation of end-use products for the deleted uses. Aventis Environmental Science has only requested cancellation of MUPs and not issuance of replacement registrations. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No	Product
Gowan Company	10163–212	Gowan diazinon technical
Aventis Environmental	432–1094	Pyrenone diazinon aqueous basescience
	432–1130	Pyrenone diazinon S.E.C.
Drexel Chemical Co.	19713–104	Diazinon technical

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that EPA cancel any of their pesticide registrations. Section 6(f)(1)(B) of FIFRA requires that EPA provide a 30–day period in which the public may comment before the Agency may act on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. In this case, all of the registrants have requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement.

C. Requests for Voluntary Cancellation of End-Use Products

In addition to requesting voluntary cancellation of MUPs, Syngenta and Aventis Environmental Science USA LP have submitted requests for voluntary cancellation of some of its registrations for end-use pesticide products containing diazinon. The end-use registrations for which cancellation was requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No	Product
Syngenta crop protection, Inc.	100–463	D•Z•N Diazinon 4E insecticide
	100–785	Evict indoor/outdoor WBC
Aventis Environmental ScienceUSA LP	432–907	Ford's diazinon 4E insecticide
	432–979	Pyrenone diazinon residual concentrate insecticide
	432–987	Pyrenone diazinon residual sprayinsecticide
	432–1062	Roach and ant spray aqueous
	432–1108	Pyrenone diazinon W.B.
	432–1114	Pyrenone diazinon water based pressurizedspray
	432–1119≤	Pyrenone diazinon water based pressurizedspray II

Syngenta and Aventis have requested that EPA waive the 180–day public comment period under section 6(f)(1)(C)(ii) of FIFRA. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested cancellations. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested cancellations at the close of the comment period for this announcement.

Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, Drexel Chemical Company has also submitted a request to amend their other end-use registrations of pesticide products containing diazinon to delete

the aforementioned uses from any product bearing such use. The registrations for which amendments to delete uses were requested are identified in the following Table 3.

TABLE 3.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Reg. No	Product
Drexel ChemicalCompany	19713–91	Diazinon insecticide
	19713–92	D–264 4E Diazinon insecticide
	19713–95	D–264 14G
	19713–145	D–264 Captan seed protectant
	19713–263	Diazinon 5G
	19713–264	Diazinon 2G
	19713–317	Bug spray (SP)
	19713–492	Diazinon 50 WP

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be amended to delete one or more pesticide uses. Drexel Chemical Co., has requested that EPA waive the 180–day comment period. In light of this request, EPA is granting the request to waive the 180–day comment period and is providing a 30–day public comment period before taking action on the requested amendments to delete uses. Because of risk concerns posed by certain uses of diazinon, EPA intends to grant the requested amendments to delete uses at the close of the comment period for this announcement.

III. Proposed Existing Stocks Provisions

The registrants have requested voluntary cancellation of the diazinon registrations identified in Tables 1 and 2 and submitted amendments to terminate certain uses of the diazinon registrations identified in Table 3. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary cancellation and amendment. For purposes of the cancellation order that the Agency intends to issue at the close of the comment period for this announcement, the term ''existing stocks'' will be defined, pursuant to EPA's existing stocks policy at 56 FR 29362, June 26, 1991, as those stocks of a registered pesticide product which are currently in the United States, which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale, or use of existing stocks after the effective date of the cancellation order that the Agency intends to issue that is not consistent with the terms of that order will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

A. Manufacturing-Use Products

1. *Distribution or sale*. The distribution or sale of existing stocks of any MUP identified in Table 1 will not be lawful under FIFRA as of the date of issuance of the cancellation order except for purposes of relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal.

2. *Use for producing other products*. The use of existing stocks of any MUP identified in Table 1 for formulation into any other product labeled for indoor use will not be lawful under FIFRA effective issuance date of the cancellation order. The use of existing stocks of any MUP identified in Table 1 for formulation into any other product labeled for the agricultural uses listed above will not be lawful under FIFRA as of June 30, 2001.

B. End-Use Products

1. *Distribution or sale of products bearing instructions for use on agricultural crops*. The distribution or sale or of existing stocks by any person of any product listed in Table 2 or 3 that bears instructions for use on the above listed agricultural crops will not be lawful under FIFRA 1–year after the effective date of the use deletion or cancellation. Any use of such product until that date must be in accordance with the existing labeling of that product.

2. *Distribution or sale of products bearing instructions for use on indoor sites*. The distribution or sale of existing stocks by the registrant of any product listed in Table 2 or 3 that bears instructions for use at or on any indoor sites (except mushroom houses), shall not be lawful under FIFRA effective issuance date of the cancellation order.

3. *Retail and other distribution or sale*. The retail sale of existing stocks of products listed in Table 2 or 3 bearing instructions for any indoor uses except mushroom houses will not be lawful under FIFRA after December 31, 2002.

4. *Use of existing stocks*. EPA intends to permit the use of existing stocks of products listed in Table 2 or 3 until such stocks areexhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 18, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–13514 Filed 5–29–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1024; FRL–6782–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1024, must be received on or before June 29, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1024 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Akiva Abramovitch, Insecticide Rodenticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8328; e-mail address: abramovitch.akiva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulation and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1024. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1024 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1024. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Aventis CropScience (formerly, Rhone-Poulenc Ag Company)

PP 0F06082

EPA has received a pesticide petition (0F06082) from Aventis CropScience (formerly, Rhone-Poulenc Ag Company), P.O. Box 12014, #2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for residues of acetamiprid in or on the raw agricultural commodity brassica (cole crops) at 1.2 parts per million (ppm); canola seed and mustard seed at 1.2 ppm; citrus at 0.5 ppm; cottonseed at 0.06 ppm; fruiting vegetables at 0.2 ppm; grapes at 0.2 ppm; leafy vegetables at 3.0 ppm; and pome fruits at 0.70 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of acetamiprid in plants is well understood, having been investigated in eggplant, apples, cabbage, carrots, and cotton. Metabolism in plants primarily involves demethylation of the N-methyl group with subsequent hydrolysis of the acetamidine function to give the N-acetyl compound. This compound is then hydrolyzed to the corresponding amine followed by oxidation to the alcohol and acid. Conjugation of the alcohol with glucose is also significant. Degradation of the side chain without loss of the N-methyl group is seen in carrots since this is the major metabolic route in soil.

2. *Analytical method*. Based upon the metabolism of acetamiprid in plants and the toxicology of the parent and metabolites, quantification of the parent acetamiprid is sufficient to determine toxic residues. As a result a method has been developed which involves extraction of acetamiprid from crops with methanol, filtration, partitioning and cleanup, and analysis by gas chromatography/electron capture detector (GC/ECD) methods. The limit of quantification for the method is 0.01 ppm and the method detection limit (MDL) is 0.0005 ppm.

3. *Magnitude of residues*. Magnitude of residue studies were conducted in pome fruit (apples and pears); brassica (cole crops including broccoli, cabbage and mustard greens); leafy vegetables (leaf lettuce, head lettuce, celery, and spinach); fruiting vegetables (tomatoes, eggplant, and peppers); citrus (oranges, grapefruit, and lemon); grapes; canola seed; mustard seed; and cotton. Trials were conducted in all of the major use areas for each of the crops as specified in the Residue Chemistry Guidelines OPPTS 860.1500 with applications at the maximum label use rate for each crop. (Trials for mustard seed were conducted in Canada.). As a result of the field trials, the following tolerances are proposed for each of the crop group, crops or matrices: pome fruit at 0.70 ppm; brassica (cole crops) at 1.2 ppm; leafy vegetables at 3.0 ppm; fruiting vegetables at 0.2 ppm; grapes at 0.2 ppm; citrus at 0.5 ppm; canola seed at 0.01 ppm; mustard seed at 0.01 ppm; cottonseed at 0.06 ppm; and cotton gin trash at 20 ppm. Processing studies were also conducted with apples, citrus, cottonseed, grapes, and tomatoes. Maximum processed commodity residues exceeded 1.2x the RAC tolerance only with citrus dry pulp (2.22x) and tomato paste (1.65x). Therefore, tolerances are proposed for these processed commodities as follows: citrus dry pulp at 1.2 ppm and tomato paste at 0.4 ppm. Tolerances are also proposed for milk, liver, kidney, muscle and fat at 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} for acetamiprid was 146 milligrams/kilogram (mg/kg) for female Sprague-Dawley rats and 217 mg/kg for male rats. The acute dermal LD_{50} for acetamiprid was greater than 2,000 mg/kg in rats. The acute 4–hour inhalation LC_{50} for acetamiprid was greater than 1.15 milligrams/Liter (mg/L), the highest attainable concentration. Acetamiprid was not irritating to the eyes, or skin and was not considered to be a sensitizing agent. The no observed adverse effect level (NOAEL) for acute neurotoxicity was 10 mg/kg and no evidence of neuropathy was noted.

The acute oral LD_{50} for Acetamiprid 70WP was 944 mg/kg for female Sprague-Dawley rats and 1,107 mg/kg for male rats. The acute dermal LD_{50} for formulated acetamiprid was greater than 2,000 mg/kg in rats. The acute inhalation LC_{50} (4–hour) for Acetamiprid 70WP was determined to be greater than 2.88 mg/L, the highest attainable concentration. Acetamiprid 70WP was concluded to be a mild eye irritant and slight skin irritant. There were no indications of skin sensitization for the formulated product.

2. *Genotoxicty*. Based on the weight of the evidence provided by a complete test battery, acetamiprid is neither mutagenic nor genotoxic. The compound was found to be devoid of mutagenic activity (with and without metabolic activation) in *Salmonella typhimurium* and *Escherichia coli* (Ames assay). Acetamiprid was also not mutagenic in an *in vitro* mammalian cell gene mutation assay on Chinese hamster ovary (CHO) cells (Hypoxanthine guanine phophoribosyl transferase (HGPRT) locus, with and without metabolic activation). Acetamiprid did not induce unscheduled DNA synthesis unscheduled DNA synthesis (UDS) in either rat liver primary cell cultures or in mammalian liver cells *in vivo*. In an *in vitro* chromosomal aberration study using CHO cells, acetamiprid was positive when tested under metabolic activation at cytotoxic dose levels; no effect was detected without metabolic activation. Acetamiprid was non-

clastogenic in an *in vivo* chromosomal aberration study in rat bone marrow. It also was negative in an *in vivo* mouse bone marrow micronucleus assay.

3. *Reproductive and developmental toxicity*. In the multi-generation rat reproduction study, a NOAEL of 100 ppm was established based on decreased body weight gains and a reproduction NOAEL of 800 ppm (highest dose tested) was established for reproductive performance and fertility. In the rat teratology study, the developmental NOAEL was 50 mg/kg/day (maternal NOAEL of 16 mg/kg/day based on decreased body weight and food consumption) and in the rabbit teratology study, the developmental NOAEL was 30 mg/kg/day (maternal NOAEL of 15 mg/kg/day based on decreased body weight and food consumption). In both the rat and rabbit there were no fetotoxic or teratogenic findings.

4. *Subchronic toxicity*.In the 3–month dog feeding study, a NOAEL of 800 ppm (32 mg/kg/day for both males and females) was established based on growth retardation and decreased food consumption.

In the 3–month rat feeding study, a NOAEL of 200 ppm (12.4 and 14.6 mg/kg/day respectively for male and female rats) was established based on liver cell hypertrophy at a dose of 800 ppm.

In the 3–month mouse feeding study, a NOAEL of 400 ppm (53.2 and 64.6 mg/kg/day respectively for male and female rats) was established based on increased liver/body weight ratio and decreased cholesterol in females at 800 ppm.

A 13–week dietary neurotoxicity study, for acetamiprid established a NOAEL of 200 ppm (14.8 and 16.3 mg/kg/day for male and female rats) based on reduced body weight and food consumption decreases at 800 ppm. There was no evidence of neurotoxicity.

A 21–day dermal study, in rabbits at dose levels up to 1,000 mg/kg/day caused no systemic toxicity, dermal irritation or histomorphological lesions in either sex tested.

5. *Chronic toxicity*. In the 1–year dog study, the NOAEL was established at 600 ppm (20.5 and 21 mg/kg/day for male and female dogs) based on growth retardation and decrease of food consumption at a dose of 1,500 ppm.

In the 18–month mouse study, the NOAEL was established at 130 ppm (20.3 and 25.2 mg/kg/day for male and female mice) based on growth retardation and hepatic toxicity at 400 ppm.

In the 2–year rat study, the NOAEL was 160 ppm (7.1 and 8.8 mg/kg/day for male and female rats) based on growth retardation and hepatic toxicity. There were no indications of carcinogenicity in either the rat or mouse chronic studies.

6. *Animal metabolism*. The metabolism of acetamiprid is well understood and the primary animal metabolite is IM–2–1.

7. *Metabolite toxicology*. Testing of IM–2–1 demonstrated that it is significantly less toxic than the parent acetamiprid and it is not being considered as part of the total toxic residue, therefore no tolerance is being requested by the registrant. The acute oral LD_{50} of IM–2–1 is 2,543 mg/kg for male rats and 1,762 mg/kg for female rats.

8. *Endocrine disruption*. Acetamiprid does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproductive study in rats gave no indication that acetamiprid has any effects on endocrine function. The chronic feeding studies also did not show any long-term effects related to endocrine systems.

C. Aggregate Exposure

1. *Dietary exposure*. Acute and chronic dietary analyses were conducted to estimate exposure to potential acetamiprid residues in/on the following crops: cole crop group, citrus crop group, fruiting vegetable crop group, pome fruit crop group, grapes leafy vegetables, canola oil, mustard and cotton using the Dietary Exposure Evaluation Model (DEEM) software. Exposure estimates to water were made based upon modeling.

i. *Food*. The acute dietary exposure estimates at the 99.9th percentile of for the U.S. Population was calculated to be 3.2% of the acute Reference Dose (RfD). The population subgroup with the highest exposure was children 1–6 at 6% of the acute RFD. The acute RfD was based on the NOAEL of 10 mg/kg/day in the acute neurotoxicity study. Chronic dietary exposure estimates from residues of acetamiprid for the U.S. population was 0.1% of the chronic RfD. The subpopulation with the highest exposure wasnon-nursing infants with 0.5% of the RfD used. These values are based on projected percentages for percent of crop treated and field trial residues at maximum label rates and minimum pre-harvest intervals (PHI) with no reduction factors for common washing, cooking, or preparation practices. These can be considered conservative values. The chronic RfD was based on the NOAEL of 7 mg/kg/day in the chronic study.

ii. *Drinking water*. EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water analysis for acetamiprid. This SOP utilizes a variety of tools to conduct drinking water assessment. These tools include water models such as Screening Concentration in Ground Water (SCI-GROW), Generic Expected Environmental Concentration (GENEEC), EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface water and ground water. In the case of acetamiprid, monitoring data do not exist, therefore, GENEEC and SCI-GROW models were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for acute and chronic exposures for all adults and children greatly exceed the modeled acetamiprid water residues, drinking water estimated concentrations (DWEC). The acute DWLOC values are 3,360 ppb for adults and 940 ppb for children. The worst case DWEC for acute scenarios is calculated to be 13.27 ppb using the GENEEC surface water model. The chronic DWLOC values are 2,450 ppb for adults and 700 ppb for children. The DWEC for the worst case chronic scenario is 1.59 ppb GENEEC.

2. *Non-dietary exposure*. A Ready to Use, dilute formulation of acetamiprid will be registered for insect control on outdoor ornamentals, vegetable and fruit trees. Based on surrogate exposure data obtained from a carbaryl study, the homeowner margin of exposure (MOE) was calculated to exceed 10 million. Post-application exposure resulting from contact with acetamiprid treated foliage resulted in an MOE in excess of 500,000.

D. Cumulative Effects

EPA and ILSI are developing the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity and how to cumulate pesticides in a quantitative manner. A determination has not been made that acetamiprid has a common mechanism of toxicity with other substances. Acetamiprid does not appear to produce a common toxic metabolite with other substances. A cumulative risk assessment was therefore not performed for this analysis.

E. Safety Determination

1. *U.S. population*. Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to

the proposed uses of acetamiprid will utilize at most 3.9% of the acute RfD for the U.S. population, and is likely to be much less, as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure to acetamiprid.

2. *Infants and children*. In multi-generation reproduction and teratology studies, NOAEL on reproduction were observed in either rats or rabbits. In the long-term, feeding studies in rats and mice there was no evidence of carcinogenicity. Acetamiprid was not mutagenic under the conditions of testing. Using the conservative exposure assumptions described in the exposure section above, the percent of the RfD that will be used for short-term aggregate exposure to residues of acetamiprid will be 6% for children 1–6 (the most highly exposed sub-group). This value is based on dietary exposure alone as only children over 7 are expected to have residential post-application exposure for the proposed acetamiprid uses. The aggregate exposure for children 7–12 (based on dietary and residential exposure) results in a value of 4.0% of the RfD being used. As in the adult situation, drinking water levels of comparison are much higher than the worst case drinking water estimated concentrations. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of acetamiprid.

F. International Tolerances

Acetamiprid is registered for use in Chile, Brazil, Mexico and Japan for use on certain food crops for domestic consumption only. Imported commodities containing residues of acetamiprid should not be encountered in the United States at this time.

[FR Doc. 01–13420 Filed 5–29–01 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1022; FRL–6782–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1022 must be received on or before June 29, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1022 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply To Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'', '' Regulation and Proposed Rules'', and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–1022. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1022 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services

Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1022. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summararies announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project # 4 (IR-4)

PP 0E6211, 1E6238, and 1E6264

EPA has received pesticide petitions (0E6211, 1E6238, and 1E6264) from the Interregional Research Project Number 4 (IR-4), [681 US Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.507 by establishing tolerances for residues of azoxystrobin, (methyl (E)-2-2-6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) and the Z isomer of azoxystrobin, (methyl (Z)-2-2-6-(2- cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) in or on the following raw agricultural commodities (RACs):

PP# 0E6211 proposes to establish tolerances for strawberry at 10 parts per million (ppm), mint at 30 ppm, grass forage (from grass grown for seed) at 15 ppm, grass (from grass grown for seed) hay at 20 ppm, and 3.0 ppm for watercress, tropical fruits, persimmon, paw paw, tamarind, jackfruit, and loquat.

PP# 1E6238 proposes to establish tolerances for bushberry subgroup, lingonberries, juneberries, and salal at 3.0 ppm.

PP# 1E6264 proposes to establish tolerances for the leafy brassica greens subgroup and turnip greens at 25 ppm, and 2.0 ppm for pepper, eggplant, and okra.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on these petitions.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of azoxystrobin as well as the nature of the residues is adequately understood for purposes of the tolerances.

2. *Analytical method*. Gas chromatography with nitrogen-phosphorus detection (GC-NPD) or in mobile phase by high performance liquid chromatography with ultra-violet detection (HPLC-UV), is available. The method(s) are adequate for enforcement purposes. Analytical methods are also available for analyzing meat, milk, poultry and eggs which underwent successful independent laboratory validations.

3. *Magnitude of residues*. Complete residue data for azoxystrobin (on legume vegetable group, hops, bushberries, lingonberries, salal, juneberries, forage grass, forage hay, jackfruit, loquat, mint, fresh, paw paw, peppermint, persimmon, spearmint, strawberry, tamarind, tropical fruit, watercress, eggplant, leafy brassica subgroup, okra, peppers, and turnip greens) have been submitted. The

requested tolerances are adequately supported.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral toxicity study in rats of technical azoxystrobin resulted in a lethal dose $(LD)_{50}$ of 5,000 milligrams/kilogram (mg/kg) for both males and females. The acute dermal toxicity study in rats of technical azoxystrobin resulted in $a(LD)_{50}$ of 2,000 mg/kg. The acute inhalation study of technical azoxystrobin in rats resulted in a lethal concentration LC_{50} of 0.962 mg/liter (L) in males and 0.698 m/L in females. In an acute oral neurotoxicity study in rats dosed once by gavage with 0, 200, 600, or 2,000 mg/kg azoxystrobin, the systemic toxicity no observed adverse effect level (NOAEL) was <200 mg/kg and the systemic toxicity lowest observed adverse effect level (LOAEL) was 200 mg/kg, based on the occurrence of transient diarrhea in both sexes. There was no indication of neurotoxicity at the doses tested.

2. *Genotoxicity*. Azoxystrobin was negative for mutagenicity in the salmonella/mammalian activation gene mutation assay, mouse micronucleus test, and unscheduled deoxyribonucleic acid (DNA) synthesis in rat hepatocytes/mammalian cells *in vivo/in vitro* procedure study. In the forward mutation study using L5178 mouse lymphoma cells in culture, azoxystrobin tested positive for forward gene mutation at the TK locus. In the *in vitro* human lymphocytes cytogenetics assay of azoxystrobin, there was evidence of a concentration related induction of chromosomal aberrations over background in the presence of moderate to severe cytotoxicity.

3. *Reproductive and developmental toxicity*. In a prenatal development study in rats gavaged with azoxystrobin at dose levels of 0, 25, 100, or 300 mg/kg/day during days 7 through 16 of gestation, lethality at the highest dose caused the discontinuation of dosing at that level. The developmental NOAEL was greater than or equal to 100 mg/kg/day and the developmental LOAEL was >100 mg/kg/day because no significant adverse developmental effects were observed. In this same study, the maternal NOAEL was not established; the maternal LOAEL was 25 mg/kg/day, based on increased salivation.

In a prenatal developmental study in rabbits gavaged with 0, 50, 150, or 500 mg/kg/day during days 8 through 20 of gestation, the developmental NOAEL was 500 mg/kg/day and the developmental LOAEL was> 500 mg/kg/day because no treatment-related adverse effects on development were seen. The maternal NOAEL was 150 mg/kg/day and the maternal LOAEL was 500 mg/kg/day, based on decreased body weight gain.

In a 2–generation reproduction study, rats were fed 0, 60, 300, or 1,500 ppm of azoxystrobin. The reproductive NOAEL was 32.2 mg/kg/day. The reproductive LOAEL was 165.4 mg/kg/day; reproductive toxicity was demonstrated as treatment-related reductions in adjusted pup body weights as observed in the F<18 and F<2 pups dosed at 1,500 ppm (165.4 mg/kg/day).

4. *Subchronic toxicity*. In a 90–day rat feeding study the NOAEL was 20.4 mg/kg/day for males and females. The LOAEL was 211 mg/kg/day based on decreased weight gain in both sexes, clinical observations of distended abdomens and reduced body size, and clinical pathology findings attributable to reduced nutritional status.

In a subchronic toxicity study in which azoxystrobin was administered to dogs by capsule for 92 or 93 days, the NOAEL for both males and females was 50 mg/kg/day. The LOAEL was 250 mg/kg/day, based on treatment-related clinical observations and clinical chemistry alterations at this dose.

In a 21–day repeated-dose dermal rat study using azoxystrobin, the NOAEL for both males and females was greater than or equal to 1,000 mg/kg/day (the highest dosing regimen); a LOAEL was therefore not determined.

5. *Chronic toxicity*. In a 2–year feeding study in rat fed diets containing 0, 60, 300, and 750/1,500 ppm (males/females), the systemic toxicity NOAEL was 18.2 mg/kg/day for males and 22.3 mg/kg/day for females. The systemic toxicity LOAEL for males was 34 mg/kg/day, based on reduced body weights, food consumption and efficiency, and bile duct lesions. The systemic toxicity LOAEL for females was 117.1 mg/kg/day, based on reduced body weights. There was no evidence of carcinogenic activity in this study.

In a 1–year feeding study in dogs to which azoxystrobin was fed by capsule at doses of 0, 3, 25, or 200 mg/kg/day, the NOAEL for both males and females was 25 mg/kg/day and the LOAEL was 200 mg/kg/day for both sexes, based on clinical observations, clinical chemistry changes, and liver weight increases that were observed in both sexes.

In a 2–year carcinogenicity feeding study in mice using dosing concentrations of 0, 50, 300, or 2,000 ppm, the systemic toxicity NOAEL was 37.5 mg/kg/day for both males and females. The systemic toxicity LOAEL was 272.4 mg/kg/day for both sexes, based on reduced body weights in both at this dose. There was no evidence of carcinogenicity at the dose levels tested.

According to the new proposed guidelines for Carcinogen Risk Assessment, the appropriate descriptor for human carcinogenic potential of azoxystrobin is ''Not Likely.'' The appropriate subdescriptor is ''has been evaluated in at least two well conducted studies in two appropriate species without demonstrating carcinogenic effects.''

6. *Animal metabolism*. In this study, azoxystrobin unlabeled or with a pyrimidinyl, phenylacrylate, or cyanophenyl label was administered to rats by gavage as a single or 14–day repeated doses. Less than 0.5% of the administered dose was detected in the tissues and carcass up to 7 days post-dosing-most of it was in excretion-related organs. There was no evidence of potential for bioaccumulation. The primary route of excretion was via the feces, though 9 to 18% was detected in the urine of the various dose groups. Absorbed azoxystrobin appeared to be extensively metabolized. A metabolic pathway was proposed showing hydrolysis and subsequent glucuronide conjugation as the major biotransformation process.

7. *Metabolite toxicology*. There are no metabolites of concern based on the differential metabolism between plants and animals.

8. *Endocrine disruption*. There is no evidence that azoxystrobin is an endocrine disrupter.

C. Aggregate Exposure

1. *Dietary exposure*. Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer, in or on a variety of RACs at levels ranging from 0.02 ppm on tree nuts to 50.0 ppm on leaves of root and tuber vegetables. Included in these tolerances are animal commodities which were established in conjunction with tolerances for animal feed.

i. *Food*. For the purposes of assessing the potential acute and chronic dietary exposure, Syngenta has estimated acute and chronic exposure for all registered crops, (EPA) pending uses, and newly proposed uses. Novigen Sciences', Inc. Dietary Exposure Evaluation Model (DEEM), which is licensed to Syngenta, was used to estimate the chronic and acute dietary exposure.

a. *Acute*. The DEEM model was used for analysis of individual food consumption as reported by the USDA using the Tier I analysis. The Tier I analysis used tolerance values as anticipated residues. Syngenta's acute dietary exposure assessment estimated

percent of the acute population adjusted dose (aPAD) and corresponding margins of exposure (MOE) for the overall U.S. population, infants/children, and females 13+ as presented in Table 1.

TABLE 1.—ACUTE DIETARY RISK ASSESSMENT FOR AZOXYSTROBIN

Population Subgroup	Exposure (mg/kg/day)	Percent aPAD
U.S. population (total)	0.094350	14.0%
Infants/children	0.151589	22.6%
Females 13+	0.088553	13.2%

b. *Chronic*. In conducting this chronic dietary risk assessment Syngenta has made very conservative assumptions—100% of all commodities having azoxystrobin tolerances or proposed tolerances will contain azoxystrobin residues at the level of the tolerance. Default concentration factors have been removed where data show no concentration of residues (grape juice, grapes, raisins; tomatoes juice, tomatoes, puree; and white/dry potatoes). The chronic reference dose (RfD) = 0.18 mg/kg/day.

The existing azoxystrobin tolerances published and pending result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentage of the Chronic RfD. As the 10X safety factor was removed by EPA, the chronic RfD is equal to the PAD (population-adjusted dose). As a result, the exposure given as a percentage of the total allowable is reported as %PAD. These results are presented in Table 2.

TABLE 2.—CHRONIC DIETARY RISK ASSESSMENT FOR AZOXYSTROBIN

Population Subgroup	Exposure (mg/kg/day)	Percent Reference Dose[1] (%Chronic PAD/RfD)
U.S. population (total)	0.028977	16.1%
All infants <1 year	0.026769	14.9%
Nursing infants <1 year	0008527	4.7%
Non-nursing infants <1 year	0.032107	17.8%
Children (1–6 years old)	0.047504	26.4%
Children (7–12 years old)	0.031544	17.5%
Western region	0.031923	17.7%
Non-hispanic/non-white/non-black	0.044724	24.8%
Females 13+ (nursing)	0.031485	17.5%

[1] Percentage reference dose (%Chronic PAD)= Exposure x 100% (as RfD=PAD in this case) Chronic PAD

ii. *Drinking water*. There is no established Maximum Concentration Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established. The concentration of azoxystrobin in surface water based on GENEEC (Generic Estimated Environmental Concentration) modeling and in ground water based on Screening Concentration in Ground Water (SCI-GROW) modeling.

Based on the chronic dietary (food) exposure estimated, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and summarized in the table below. EPA has estimated the highest EEC of azoxystrobin in surface water is from the application of azoxystrobin on grapes (39 µg/L). The estimated environmental concentration (EEC) for ground water is 0.064 µg/L resulting from use on turf. For purposes of risk assessment, the maximum EEC for azoxystrobin in drinking water (39 µg/L) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the chronic (non-cancer) endpoint. These DWLOCs for various populations categories are summarized in Tables 3 and 4.

TABLE 3.—DRINKING WATER LEVELS OF COMPARISON FOR ACUTE EXPOSURE TO AZOXYSTROBIN

Subgroup[1]	aPAD (mg/kg/day)	Food Exposure (mg/kg/day)	Maximum Water Exposure (mg/kg/day)	DWLOC (µg/L)
U.S. population	0.67	0.094350	0.57565	20147.7 5
Females 13+ (nursing)	0.67	0.088553	0.581447	17443.41

TABLE 3.—DRINKING WATER LEVELS OF COMPARISON FOR ACUTE EXPOSURE TO AZOXYSTROBIN—Continued

Subgroup[1]	aPAD (mg/kg/day)	Food Exposure (mg/kg/day)	Maximum Water Exposure (mg/kg/day)	DWLOC (µg/L)
Children (1-6 years old)	0.67	0.151589	0.518411	5184.11

[1] Within each of these categories, the subgroup with the highest food exposure was selected.

TABLE 4.—DRINKING WATER LEVEL OF COMPARISON FOR CHRONIC EXPOSURE TO AZOXYSTROBIN

Subgroup[1]	cPAD (mg/kg/day)	Food Exposure (mg/kg/day)	Max Water Exposure[2] (mg/kg/day)	DWLOC [3,4,5] (µg/L)
U.S. population	0.18	0.028977	0.151023	5285.805
Females 13+ (nursing)	0.18	0.031485	0.148515	4455.45
Children (1–6 years old)	0.18	0.047504	0.132496	1324.96

[1] Within each of these categories, the subgroup with the highest food exposure was selected.
[2] Maximum Water Exposure (Chronic) (mg/kg/day) = Chronic RfD(mg/kg/day)–Food Exposure (mg/kg/day).
[3] DWLOC (µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ (10–3 µg/µg) * water consumed daily (L/day).
[4] HED default body weights are: General U.S. population, 70 kg; Females 13+ years old 60 kg; infants and children 10 kg.
[5] HED Default daily drinking rates are 2 L/day for adults and 1 L/day for children.

2. *Non-dietary exposure.* Azoxystrobin is registered for residential use on ornamentals and turf. The Agency evaluated the existing toxicological data base for azoxystrobin and assessed appropriate toxicological endpoints and dose levels of concern that should be assessed for risk assessment purposes. Dermal absorption data indicate that absorption is less than or equal to 4%. Azoxystrobin is currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that is appropriate to aggregate chronic food and water and intermediate-term exposures for azoxystrobin. EPA has concluded that food and residential exposures aggregated result in MOEs of 520 (aggregate short-term), and 420 (aggregate intermediate term) for the subgroup children 1–6 years old.

D. Cumulative Effects

Azoxystrobin is related to the naturally occurring strobilurins. Syngenta concluded that further consideration of a common mechanism of toxicity is not appropriate at this time since there are no data to establish whether a common mechanism exists with any other substance.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described and completeness and reliability of the toxicity data, it can be concluded that there is reasonable certainty that no harm will result from aggregate exposure to azoxystrobin. Total aggregate exposures for all label uses will utilize less than 16.1% of the cPAD for the chronic dietary exposures.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In either case, EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOAEL in the animal study appropriate to the particular risk assessment. This hundredfold uncertainty (safety) factor/margin of exposure (safety) is designed to account for combined inter- and intra-species variability. EPA believes that reliable data support using the standard hundredfold margin/factor not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor. The Agency's Food Quality Protection Act (FQPA) Safety Factor Committee removed the additional 10X safety factor to account for sensitivity of infants and children.

F. International Tolerances

There are no Codex Maximum Residue Level's established for azoxystrobin.

[FR Doc. 01–13515 Filed 5–29–01; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50886; FRL–6781–3]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 249, Crystal Mall #2, Arlington, VA; (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons

who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

II. EUP

EPA has issued the following EUP:

71049–EUP–1 and 71049–EUP–2. Issuance. KIM-C1, LLC, 6333 East Liberty Avenue, Fresno, California 93727. This EUP allows the use of 61.78 (1st year), 62.74 (2nd year), 63.11 (3rd year) pounds of the plant growth regulator CPPU [*N*-(2-chloro-4-pyridinyl)-*N*′-phenyl urea] on 4,185 (1st year), 4,250 (2nd year), 4,275 (3rd year) acres of almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh) to evaluate the control of fruit size and/or yield. The program is authorized only in the States of California, Florida, Georgia, Michigan, and Washington. The EUP is effective from April 1, 2001 to April 1, 2004. A tolerance has been established for residues of the active ingredient in or on almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, plums (fresh).

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: May 16, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–13279 Filed 5–29–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6987–6]

Proposed CERCLA Administrative Settlement Agreement—Service First Barrel and Drum Site, Salt Lake City, Salt Lake County, UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(h)(1), notice is hereby given of the proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), concerning the Service First Barrel and Drum site between EPA, and Miguel A. Alpizar and Sylvia P. Orozco (''Settling Parties''). The Service First Barrel and Drum Site, is located at 1066 South Redwood Road, in Salt Lake City, Salt Lake County, Utah (the ''Site''). The settlement, embodied in the proposed Administrative Settlement Agreement, EPA Docket No. CERCLA–8–2001–05 (''Agreement''), is designed to resolve the Settling Parties'' liability at the Site through a covenant not to sue for all response costs incurred and to be incurred in connection with removal activities at the Site.

Miguel A. Alpizar and Sylvia P. Orozco are the owners of one of the parcels of land which comprise the Site. Settling Parties purchased the parcel of land where a former drum cleaning and reconditioning business had been conducted. At the time of purchase, and pursuant to the Real Estate Purchase Contract, the seller agreed to take full responsibility for any and all necessary remediation procedures required to cleanup any contamination on the property. The proposed Agreement is a cash-out of the Settling Parties' liability under section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). Under the terms of the proposed Agreement, the Settling Parties agree to grant access to all parties conducting removal activities at the Site and will reimburse the United States the sum of $2,000. In exchange, the Settling Parties will settle their liability for all response costs incurred at the Site in connection with the planned removal activities and will receive contribution protection from other parties associated with the Site.

OPPORTUNITY FOR COMMENT: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado.

DATES: Comments must be submitted on or before June 29, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Service First Barrel and Drum Site, Salt Lake City, Utah and the EPA Docket No. CERCLA–8–2001–05.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6970.

It Is So Agreed.

Dated: May 17, 2001.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 01–13510 Filed 5–29–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 22, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this

opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 29, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0206.

Title: Part 21, Multipoint Distribution Service Stations.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 15,858.

Estimated Time Per Response: .083 hours—6 hours.

Frequency of Response: On occasion and annual reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 10,221 hours.

Total Annual Cost: $1,244,300.

Needs and Uses: The information requested in part 21 is used by the Commission staff to fulfill its obligations as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended. The information is used to determine the technical, legal and other qualifications of applicants to operate a station in MDS. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The FCC staff uses the information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

The information collection has been revised due to suspension of the EEO rules. The increase in public costs is due to an estimated increase in the various requirements of Part 21.

OMB Control No.: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77 (47 CFR 64.703(a), 64.709, and 64.710).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 1,500 respondents; 1,2000,000,000 responses.

Estimated Time Per Response: 2 seconds per call—50 hours.

Frequency of Response: On occasion and annual reporting requirements, third party disclosure requirement.

Total Annual Burden: 699,157 hours.

Total Annual Cost: $216,000.

Needs and Uses: Pursuant to Section 64.703(a), Operator Service Providers (OSP's) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. Section 64.709 codifies the requirements for OSP's to file informational tariffs with the Commission. Section 64.710 requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed, among other things.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–13456 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 21, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 29, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0110

Title: Application for Renewal of License for AM, FM, TV Translator or LPTV.

Form Number: FCC 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 3,217.

Estimated Time per Response: 40 mins. to 11 hrs. 30 mins.

Frequency of Response: Reporting once every eight years; Third party disclosure.

Total Annual Burden: 5,271 hours.

Total Annual Costs: $1,567,850.

Needs and Uses: FCC Form 303–S is used to apply for renewal of a

commercial or noncommercial AM, FM, or TV broadcast station and FM translator, TV translator, or Low Power TV broadcast station licenses. FCC Form 303–S can also be used in seeking the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV, or LPTV station. 47 CFR Section 73.3580 requires local public notice when filing the license renewal application. For AM, FM, and TV stations, these announcements are made on-the-air. For FM/TV translators and AM/FM/TV station that are silent, the public notice should be published in a newspaper of general circulation. The FCC staff uses the data to assure that the necessary reports connected with the renewal application have been filed and that the licensee meets the basic statutory requirements to remain a broadcast station licensee.

OMB Control Number: 3060–0173.

Title: Section 73.1207, Rebroadcasts.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 5,562.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 5,056 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Station 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. This written consent assures the Commission that prior authorization for retransmission of a program was obtained. Section 73.1207 also requires stations that use the NBS time signals to notify the NBS semiannually of use of time signals.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–13454 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 15, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 29, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0570.

Title: Section 76.982, Continuation of Rate Agreements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local, or tribal governments.

Number of Respondents: 25.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 13 hours.

Total Annual Costs: None.

Needs and Uses: Franchise authorities that were regulating basic cable rates pursuant to a rate agreement executed before July 1, 1990, may continue to regulate rates during the remainder of the agreement. Franchise authorities must notify the FCC of their intentions to continue regulating rates under the rate agreement.

OMB Control Number: 3060–0562.

Title: Section 76.916, Petition for Recertification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 10.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 100 hours.

Total Annual Costs: None.

Needs and Uses: A franchising authority wishing to assume jurisdiction to regulate basic cable service and associated equipment rates after its request for certification has been denied or revoked, may file a petition for recertification with the FCC. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification.

OMB Control Number: 3060–0609.

Title: Section 76.934(e), Petitions for Extension of Time.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 35.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 140 hours.

Total Annual Costs: None.

Needs and Uses: Small cable systems may obtain an extension of time to establish compliance regulations provided that they can demonstrate that timely compliance would result in economic hardship. Requests for

extension of time are addressed to local franchising authorities concerning rates for basic service tiers and to the FCC concerning rates for cable programming service tiers.

OMB Control Number: 3060–0610.

Title: Section 76.1606, Rate Change While Complaint Pending.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 400.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 200 hours.

Total Annual Costs: None.

Needs and Uses: A cable operator that proposes to change any rate while a cable service tier rate complaint is pending before the FCC shall provide the Commission at least 30 days notice of the proposed rate change to allow the Commission time to review any pending rate complaints.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–13455 Filed 5–29–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829), OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Implementation of the Following Report

1. Report title: Declaration for a State Member Bank to Control, or Hold an Interest In, a Financial Subsidiary.

Agency form number: FR 4017.

OMB Control number: 7100–0292.

Frequency: Event-generated.

Reporters: State Member Banks.

Annual reporting hours: 100 hours.

Estimated average hours per response: 1 hour.

Number of respondents: 100.

Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit by Title I of the Gramm-Leach-Bliley Act (Pub. L. 106–103, 113 Stat. 1338 (1999)). A company may request confidentiality for the information contained in the information collection pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(6)).

Abstract: In March 2000, the Board adopted, on an interim basis, and requested public comment on a rule implementing the financial subsidiary provisions of the GLB Act for state member banks (Docket No. R–1064; 65 **Federal Register** 14810 (2000)). The interim rule specifies the capital, managerial, Community Reinvestment Act and other requirements that a state member bank must meet to own or control a financial subsidiary under the GLB Act. In addition, the interim rule requires a state member bank to provide notice to the Federal Reserve at least 15 days prior to establishing a financial subsidiary or commencing a newly authorized financial activity through an existing financial subsidiary. The notice must provide basic information concerning the proposed transaction and certify that bank and its depository institution affiliates meet the capital and managerial requirements of the GLB Act.

The Federal Reserve received one comment on the interim rule that bears on the rule's information collection requirements. This commenter suggested that the Federal Reserve eliminate the 15-day review period for financial subsidiary notices and permit a state member bank to immediately consummate a proposed transaction after filing a certification that the bank meets the GLB Act's capital, managerial, and other requirements. Staff believes that the brief 15-day review period included in the interim rule provides the Federal Reserve an appropriate period of time to verify that a state member bank meets the capital, managerial, and other requirements imposed by the GLB Act. Accordingly, it is anticipated that the final rule presented to the Board will continue to include a period for System review of financial subsidiary notices.

Board of Governors of the Federal Reserve System, May 23, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–13475 Filed 5–29–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Jimmie Michael Luecke, The Fred Luecke Trust, The Susan Luecke Trust, Tim Kleinschmidt, trustee, The Jimmie Luecke Children Partnership, Ltd., Jimmie Luecke, general partner, all of Giddings, Texas; to acquire additional voting shares of Giddings Bancshares, Inc., Giddings, Texas, and thereby indirectly acquire additional voting shares of Giddings Holdings, Inc., Dover, Delaware, and First National Bank, Giddings, Texas.

Board of Governors of the Federal Reserve System, May 23, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–13478 Filed 5–29–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 13, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Raymond and Ruth Schnake, St. Peter, Illinois; to retain voting shares of St. Peter Bancshares, Inc., St. Peter, Illinois, and thereby indirectly retain voting shares of First State Bank of St. Peter, St. Peter, Illinois.

Board of Governors of the Federal Reserve System, May 24, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–13559 Filed 5–29–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-12376) published on page 27144 of the issue for Wednesday, May 16, 2001.

Under the Federal Reserve Bank of Richmond heading, the entry for First Union Corporation, Charlotte, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Union Corporation, Charlotte, North Carolina, to merge with Wachovia Corporation, Winston-Salem, North Carolina, and thereby indirectly acquire voting shares of Wachovia Bank, National Association, Winston-Salem, North Carolina; Wachovia Acquisition Corporation 2001-01, Winston-Salem, North Carolina; Republic Security Bank, West Palm Beach, Florida; and First National Bank of Atlanta, New Castle, Delaware (d/b/a Wachovia Bank Card Services). First Union also requests approval to exercise an option to acquire up to 19.9 percent of the voting shares of Wachovia Corporation under certain circumstances.

In connection with this application, Applicant also has applied to acquire Atlantic Savings Bank, FSB, Hilton Head Island, South Carolina, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Comments on this application must be received by June 11, 2001.

Board of Governors of the Federal Reserve System, May 23, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–13476 Filed 5–29–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Financial Investors of the South, Inc., Birmingham, Alabama; to acquire 100 percent of the voting shares of Capital Bank, Montgomery, Alabama (in organization).

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Geneva State Company, Geneva, Nebraska; to acquire 73 percent of the voting shares of Grafton State Bank, Grafton, Nebraska.

Board of Governors of the Federal Reserve System, May 24, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–13558 Filed 5–29–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the

BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Guaranty Corporation, Denver, Colorado; to acquire AMG/Guaranty Corporation, Englewood, Colorado, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, May 23, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–13477 Filed 5–29–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Meeting Notice Government in the Sunshine Act

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 4, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 25, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–13638 Filed 5–25–01; 12:23 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/30/2001			
20011690	Tyco International Ltd	Com-Net Critical Communications, Inc.	Com-Net Critical Communications, Inc.
20011707	Avnet, Inc	Kent Electronics Corporation	Kent Electronics Corporation.
20011723	Gerald W. Schwartz	Avaya Inc.	Avaya Inc.
20011731	Leap Wireless International, Inc	American Wireless License Group, LLC.	American Wireless License Group, LLC.
20011734	Novell, Inc	Cambridge Technology Partners, Inc	Cambridge Technology Partners, Inc.
20011738	Constellation Brands, Inc	Ravenswood Winery, Inc	Ravenswood Winery, Inc.
20011741	Pope & Talbot, Inc	Norske Skogindustrier ASA	Norske Skog Canada Mackenzie Pulp Limited
20011742	Koninklijke Ahold nv	Mutual Distributors, Inc	Mutual Distributors, Inc.
20011748	Temple-Inland Inc	Chesapeake Corporation	Capitol Packaging Company. Chesapeake Packaging Co.
20011749	Mr. Yizhak Sharon	The Williams Companies, Inc	Mapco Express, Inc.
20011753	GlaxoSmithKline plc	Minnesota Mining and Manufacturing Company.	3M Innovative Properties Company
20011754	Hicks, Muse, Tate & Furst Equity Fund V, L.P.	Vlasic Foods International Inc	VF Brands, Inc., Aligar, Inc., Cargal, Inc. Vlasic Foods Canada, Inc., Vlasic Int'l Brands, Inc. Vlasic Foods Distribution Company, Vlasic Standards Inc.
20011756	MBNA Corporation	Desert Schools Federal Credit Union	Desert Schools Federal Credit Union.
Transactions Granted Early Termination—05/03/2001			
20011729	Assa Abloy AB	United Dominion Industries Limited	United Dominion Industries Limited.
20011755	Crown Finance Foundation	Global TeleSystems, Inc	Global Telecom, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—05/08/2001			
20011764	Boyd Gaming Corporation	Shawn Scott	Delta Downs Racing Association, Inc. Delta Downs, Incorporated, Winner's Circle #1 of Madison, LLC.
Transactions Granted Early Termination—05/09/2001			
20011735	Johnson & Johnson	Alza Corporation	Alza Corporation.
20011762	SES Global S.A	General Electric Company	GE Subsidiary, Inc., GE Capital Global Satellites, Inc.
20011768	Benfield Greig Group plc	E.W. Blanch Holdings, Inc	E.W. Blanch Holdings, Inc.

For Further Information Contact: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–13556 Filed 5–29–01; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: General Accounting Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces three new appointments and three reappointments to fill the vacancies occurring this year, and designates the Chair and Vice Chair of the Commission.

DATES: Appointments are effective May 1, 2001 through April 30, 2004.

ADDRESSES: *GAO:* 441 G Street, NW, Washington, DC 20548; *MedPAC:* 1730 K Street, NW, Suite 800, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: *GAO:* Molly Ryan, 202/512–3592; *MedPAC:* Murray N. Ross, Ph.D., 202/653–7220.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following:

Newly appointed members are Sheila P. Burke, Under Secretary for American Museums and National Programs, Smithsonian Institution; Allen D. Feezor, Health Benefits Administrator, California Public Employees' Retirement System; and Ralph W. Muller, President and CEO, University of Chicago Hospitals and Health System; reappointed members are Joseph P. Newhouse, Ph.D., John D. MacArthur Professor of Health Policy and Management, Harvard University; Alice F. Rosenblatt, Senior Vice President, Merger and Acquisition Integration, Wellpoint Health Networks; and John W. Rowe, M.D., Chairman, CEO, and President, Aetna Inc. I also hereby name Glenn M. Hackbarth, J.D., an independent consultant, as Chair of the Commission; and Robert D. Reischauer, Ph.D., President of the Urban Institute, as Vice Chair.

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 01–13445 Filed 5–29–01; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–43]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

National Telephone Survey of Urban Mosquito Control Programs—New—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). West Nile virus is a mosquito-borne virus that is native to the eastern hemisphere, where it recently caused large epidemics of human disease in eastern Europe, Russia, and the Middle East. In 1999, West Nile virus first appeared in the United States when it caused an epidemic of mosquito-borne encephalitis and meningitis in the greater New York City metropolitan area. During 1999–2000, 83 persons (mostly senior citizens) with West Nile viral disease and 9 fatalities were reported in New York, New Jersey, and Connecticut. The apparent primary vector to humans was the house mosquito, *Culex pipiens,* which occurs in virtually all urban areas of the United States. This species is also one of the principal vectors of St. Louis encephalitis virus, historically the most important cause of epidemic viral encephalitis in the United States, and a close relative of West Nile virus. Based on the detection of West Nile virus in

birds and mosquitoes, this virus has now spread to a 12-state region of the eastern United States, extending from New Hampshire to North Carolina, and from the Atlantic coast to western Pennsylvania. It is likely that West Nile virus will continue to expand its geographic range within the United States, mainly through distribution by infected birds. Thus, many cities in the United States are at risk for West Nile virus epidemics, especially those without mosquito control programs that target *Culex* mosquitoes. No systematically collected information on such programs is currently available. Currently in the United States, mosquito control is largely a local issue funded by state and local tax dollars.

In the proposed survey, mosquito control program managers will be identified and interviewed by telephone to estimate the number of U. S. cities of at least 100,000 population that have functional programs for controlling urban *Culex* mosquitoes, by geographic region. The survey will be conducted twice, once at baseline and again two years later, to assess national and regional trends in establishing such control programs. This information will serve as a resource for the Centers for Disease Control and Prevention, state and local health departments, policymakers, and funding agencies. The total cost to the respondents is $0.

Respondents	Number of respondents	Number of responses/respondent	Average Burden/response (in hours)	Total burden in hours
Initial Telephone interview	175	1	10/60	29
Follow-up Telephone Interview with Initial Respondents	175	1	10/60	29
Total				58

Dated: May 21, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–13464 Filed 5–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–44]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Hazardous Substances Emergency Events Surveillance—Revision—OMB No. 0923–0008 The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. The primary purpose of this activity, which ATSDR has supported since 1992, is to develop, implement, and maintain a state-based surveillance system for hazardous substances emergency events which can be used to (1) describe the distribution of the hazardous substances releases; (2) describe the public health consequences (morbidity, mortality, and evacuations) associated with the events; (3) identify risk factors associated with the public health consequences; and (4) develop strategies to reduce future public health consequences. The study population will consist of all hazardous substance non-permitted acute releases within the 16 states (Alabama, Colorado, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Utah, Washington, and Wisconsin) participating in the surveillance system.

Until this system was developed and implemented, there was no national public health-based surveillance system to coordinate the collation, analysis, and distribution of hazardous substances emergency release data to public health practitioners. It was necessary to establish this national surveillance system which describes the public health impact of hazardous substances emergencies on the health of the population of the United States. The data collection form will be completed by the state health department Hazardous Substances Emergency Events Surveillance (HSEES) coordinator using a variety of sources including written and oral reports from environmental protection agencies, police, firefighters, emergency response personnel; or researched by the HSEES coordinator using census data, material safety data sheets, and chemical handbooks. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total annual burden (in hours)
State Health Departments	16	613	1	9,808

Dated: May 21, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–13465 Filed 5–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01038]

Cooperative Agreement for 2001 National Breast and Cervical Cancer Early Detection Program; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2001 funds to fund a cooperative agreement program for a National Breast and Cervical Cancer Early Detection Program was published in the **Federal Register** on May 17, 2001, [Vol 66, Number 96, Pages 27505–27511]. The notice is amended as follows:

On page 27505, second column, under section B. Eligible Applicants, the first paragraph, second line, insert ''and territories (including the Federated States of Micronesia and the Republic of the Marshall Islands) between the words ''States'' and ''or''.

On page 27505, second column, under section B. Eligible Applicants, the first paragraph, third line, insert ''or instrumentalities'' between the words ''agents,'' and ''including''.

On page 27505, second column, under section B. Eligible Applicants, the first paragraph, line nine, insert ''(including Indian Tribes, Tribal organizations, Alaska Natives and Urban Indian organizations and inter-tribal consortia, hereafter referred to as Tribes). An inter-tribal consortium or American Indian/Alaskan Native (AI/AN) organization is only eligible for funding if its primary purpose for incorporation is to improve AI/AN health, and it is representative of the Tribes, Alaska Native villages, or Urban Indian communities in which it is located. Tribes are encouraged to collaborate with other Tribes to expand the potential screening population.'' after the words ''Tribal government''

On page 27507, third column, under section F. Program Requirements, Recipient Activities, delete item 1.c.

Dated: May 22, 2001.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–13497 Filed 5–29–01; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01038]

Cooperative Agreement for 2001 National Breast and Cervical Cancer Early Detection Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). This program addresses the ''Healthy People 2010'' priority area related to cancer.

The purpose of the NBCCEDP is to apply a State, territorial, or tribal public health approach to increase access to and use of screening services. The NBCCEDP was established through the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101–354) and provides screening services for low income women. Funded programs will establish a comprehensive breast and cervical cancer early detection screening program that includes the following program components: Breast and cervical cancer screening, tracking, follow-up and case management; public education and outreach; professional education; quality assurance and improvement; surveillance and evaluation; coalitions and partnerships; and management, hereafter referred to as the NBCCEDP program components.

The President has committed the nation to an ambitious goal: By the year 2010, to eliminate the disparities in health status experienced by racial and ethnic minority populations. The NBCCEDP has been established to move closer to this goal by addressing the deficits in breast and cervical cancer screening and management among these women.

B. Eligible Applicants

Assistance will be provided only to the official health departments of States and territories (including the Federated States of Micronesia and the Republic of the Marshall Islands) or their bona fide agents or instrumentalities, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and federally recognized Indian Tribal governments (including Indian Tribes, Tribal organizations, Alaska Natives and Urban Indian organizations and inter-tribal consortia, hereafter referred to as Tribes).

An inter-tribal consortium or American Indian/Alaskan Native (AI/AN) organization is only eligible for funding if its primary purpose for incorporation is to improve AI/AN health, and it is representative of the Tribes, Alaska Native villages, or Urban Indian communities in which it is located. Tribes are encouraged to collaborate with other Tribes to expand the potential screening population.

States and Tribes currently receiving CDC funds under Program Announcement 96023, entitled 1996 National Breast and Cervical Cancer Early Detection Program, are eligible to apply for funding under this announcement.

1. The following States and Territories are not eligible to apply:

a. American Samoa, California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, South Carolina, Texas, and West Virginia, which are funded under Program Announcement 718 entitled National Breast and Cervical Cancer Early Detection Program.

b. Alaska, Arizona, Arkansas, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhodes Island, Utah, Vermont, Washington, Wisconsin, Puerto Rico, and Guam, which are funded under Program Announcement 99052 entitled National Breast and Cervical Cancer Early Detection Program.

2. The following Tribes are not eligible to apply:

a. Consolidated Tribal Health Project, Inc. (CA) and Southeast Regional Health Consortium (AK), which are funded under Program Announcement 718 entitled National Breast and Cervical Cancer Early Detection Program.

b. Arctic Slope Native Association (AK), Cherokee Nation (OK), Cheyenne River Sioux Tribe (OK), Poarch Band of Creek Indians (AL), South Central Foundation (AK), and South Puget Intertribal Planning Agency (WA), which are funded under Program announcement 99052 entitled National

Breast & Cervical Cancer Early Detection Program.

C. Availability of Funds

1. Funds Available for States

Approximately $22,421,667 is available in FY 2001 to fund approximately 15 States and the District of Columbia. It is expected that awards will range from $600,000 to $4,000,000.

2. Funds Available for Territories and Tribes

Approximately $5,400,000 is available in FY 2001 to fund approximately nine Territories or Tribes. It is expected that awards will range from $200,000 to $1,000,000.

It is expected that awards will begin on September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards for funded projects within an approved project period will be made on the basis of disease burden, performance, and the availability of funds.

3. Direct Assistance

Applicants may request Federal personnel as direct assistance, in lieu of a portion of financial assistance.

4. Requirements Related To Use of Funds

a. *60/40 Requirement:* Not less than 60 percent of cooperative agreement funds must be expended for screening, tracking, follow-up and the provision of appropriate support services such as case management. Cooperative agreement funds supporting public education and outreach, professional education, quality assurance and improvement, surveillance and program evaluation, coalitions and partnerships, and management may not exceed 40 percent of the approved budget. [Section 1503(a)(1) and (4) of the PHS Act, as amended] Further information about the 60/40 distribution is provided in the NBCCEDP Policies and Procedure Manual, Section II, beginning on page 10. The NBCCEDP Policies and Procedures Manual can be accessed through the Internet at http://www.cdc.gov/cancer/nbccedp or the program technical assistant contact listed in Section M, ''Where to Obtain Additional Information.''

b. *Inpatient Hospital Services:* Cooperative agreement funds must not be expended to provide inpatient hospital or treatment [1] services [Section 1504(g) of the PHS Act, as amended]. Refer to the NBCCEDP Policies and Procedures Manual, Section IV, ''Reimbursement Policies for Screening and Diagnostic Services,'' beginning on page 1, for additional information about allowable screening and diagnostic services.

c. *Administrative Expenses:* Not more than 10 percent of the total funds awarded may be expended annually for administrative expenses. These administrative expenses are in lieu of and replace indirect costs. [Section 1504(f) of the PHS Act, as amended.] Administrative expenses are considered a portion of the 40 percent component of the budget.

D. Recipient Financial Participation Requirement

Recipient financial participation is required for this program in accordance with the authorizing legislation. Section 1502(a) and (b)(1), (2), and (3) of the PHS Act, as amended, requires matching funds from non-Federal sources in an amount not less than $1 for each $3 of Federal funds awarded under this program. However, Title 48 of the U.S. Code 1469a(d) requires DHHS to waive matching fund requirements for Guam, U.S. Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands up to $200,000.

Matching funds may be cash or equivalent in-kind or donated services, including equipment, fairly evaluated. Contributions may be made directly or through donations from public or private entities. Public Law 93–638 authorizes tribal organizations contracting under the authority of Title I and compacting under the authority of Title III to use funds received under the Indian Self-Determination Act as matching funds.

Applicants may also designate as State, Territory, or Tribe matching funds any non-Federal amounts expended pursuant to Title XIX of the Social Security Act for the screening, tracking, follow-up and case management of women for breast and cervical cancers.

Matching funds may not include: (1) Payment for treatment services or the donation of treatment services; (2) services assisted or subsidized by the Federal government; or (3) the indirect or overhead costs of an organization.

In determining the matching fund contribution, applicants should calculate the average amount of non-Federal contributions toward breast and cervical cancer programs and activities for the two year period preceding the first Federal fiscal year of funding for NBCCEDP. This amount is referred to as Maintenance of Effort (MOE). Only those non-Federal contributions in excess of the MOE amount may be considered as matching funds. Supplanting existing program efforts with Federal or non-Federal sources is not allowable.

Costs used to satisfy the matching requirements are subject to the same prior approval requirements and rules of allowability as those which govern project costs supported by Federal funds. All costs used to satisfy the matching requirements must be documented by the applicant and will be subject to audit. Specific rules and regulations governing the matching fund requirement are included in the OMB Circular A–87 ''Cost Principles for State, Local and Indian Tribal Governments'' and PHS Grants Policy Statement, Section 6.

For further information about the matching fund requirement, see the NBCCEDP Policies and Procedures Manual, Section II, pages 19–21 and page 35.

E. Requirements of the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101–354) and Related Amendments

1. Required Screening Services

Programs must ensure that screening and rescreening procedures are available for both breast and cervical cancers and include a clinical breast exam, mammography, pelvic exam and Pap test. [Section 1503(a)(2)(A) and (B).]

2. Screening Procedures

If a new or improved, and superior, screening procedure becomes widely available and is recommended for use, this superior procedure will be utilized in the program. [Section 1503(b) of the PHS Act, as amended.]

3. Priority for Low-income Women

Eligibility for screening services under the NBCCEDP is limited to uninsured or under insured [2] women at

[1] Treatment is defined as any medical or surgical intervention recommended by a clinician, and provided for the management of a diagnosed condition.

[2] CDC, through its delegation from the Secretary, is tasked with implementing its programs. Therefore, when questions regarding the programs and the statutes behind them arise, CDC may provide definitions or explanations of what the statute as a whole, or terms contained therein, mean, in order to ensure proper implementation of its programs. CDC is entitled to deference in its interpretation of such statutes. CDC interprets ''low income women'' to include those that are ''uninsured'' and ''underinsured.'' For the NBCCEDP, CDC defines an uninsured woman as one who has no health insurance and an underinsured women as one who meets at least one of the following criteria: (1) a woman who has health insurance but whose coverage does not, to any extent, reimburse for the allowable screening or diagnostic procedure; (2) a woman who cannot

Continued

or below 250 percent of the Federal poverty line. The official poverty line is established by the Director of the Office of Management and Budget (OMB) and revised by the Secretary of DHHS in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1991 [Section 1504(a) of the PHS Act, as amended]. Policies related to eligibility for screening are detailed in the NBCCEDP Policies and Procedures Manual, Section IV.

4. Medical Referrals

Programs are required to provide appropriate referrals for medical treatment of women screened in the Program and to ensure, to the extent practicable, the provision of appropriate, affordable[3] and timely diagnostic and treatment services [Section 1501(a)(2) of the PHS Act, as amended.] The Breast and Cervical Cancer Treatment and Prevention Act (BCCTPA) of 2000 (Public Law 106–354) amends Title XIX of the Social Security Act to give States the option to provide Medicaid coverage to women who have been screened under the NBCCEDP and found to have breast or cervical pre-cancerous conditions or cancer. Additional information about this law can be obtained from the following web site: http://www.cdc.gov/cancer/nbccedp.

5. Service Delivery Area

Programs are required to establish breast and cervical cancer screening services throughout the State, Territory, or Tribe. [Section 1504(c)(1) of the PHS Act, as amended.] Funds may not be awarded under this announcement unless the State, Territory, or Tribe involved agrees that services and activities will be made available throughout the State, Territory, or Tribe, including availability to members of any Indian Tribe or tribal organization (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act). CDC may waive [Section 1504 (c)(2) of the PHS Act, as amended] this requirement if it is determined that compliance by the State, Territory, or Tribe would result in an inefficient allocation of resources with respect to carrying out a comprehensive breast and cervical cancer early detection program [as described in Section 1501(a)]. A request from the recipient outlining appropriate and detailed justification would be required before the waiver is approved.

6. Payer of Last Resort

Funds may not be awarded under this announcement unless the State, Territory, or Tribe involved agrees that funds will not be expended to make payment for any item or service that will be paid or can reasonably be expected to be paid by:

a. Any State, Territory, or Tribe compensation program, insurance policy, or Federal or State, Territory, or Tribe health benefits program.

b. An entity that provides health services on a prepaid basis. [Section 1504(d)(1) and (2) of the PHS Act, as amended.]

7. Medicare Limit for Reimbursement of Services

The amount paid by a State, Territory, or Tribe for a screening procedure may not exceed the amount that would be paid under part B of Title XVIII of the Social Security Act (Medicare)[Section 1501(b)(3) of the PHS Act, as amended].

8. Limitation on Imposition of Fees for Services

Funds may not be awarded under this announcement unless the State, Territory, or Tribe involved agrees that if charges are to be imposed on clients for the provision of services or program activities, such fees/charges for allowable screening and diagnostic evaluation will be:

a. Assessed according to a schedule of fees made available to the public [Section 1504(b)(1) of the PHS Act, amended];

b. Adjusted to reflect the income of the woman screened [Section 1504(b)(2) of the PHS Act, as amended.]; and

c. Totally waived for any woman with an income of less than 100 percent of the Federal poverty line [Section 1504(b)(3) of the PHS Act, as amended].Additionally, the schedule of fees/charges should not exceed the maximum allowable charges established by the Medicare Program administered by the Health Care Financing Administration (HCFA). Fee/charge schedules should be developed in accordance with guidelines described in the interim final rule (42 CFR Parts 405 and 534) which implements section 4163 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) which provides limited coverage for screening mammography services.

9. Quality Assurance Requirements

Cooperative agreement funds may not be awarded [under Section 1501(a)(5) of the PHS Act, as amended] unless the State, Territory, or Tribe involved agrees to assure, in accordance with the applicable law, the quality of screening procedures provided.

a. All facilities conducting mammography screening procedures funded by the Program must be MQSA certified (Mammography Quality Standards Act of 1992). [Section 1503 (c) of the PHS Act, as amended]. Additional information about quality assurance is included in the NBCCEDP Policies and Procedures Manual, Section II, page 14.

b. All facilities conducting cervical screening procedures funded by the Program must be CLIA certified (Clinical Laboratory Improvement Amendments of 1988). Pathologists participating in the Program must record their findings using the Bethesda System. [Section 1503(d) of the PHS Act, as amended] Additional information about quality assurance is included in the NBCCEDP Policies and Procedures Manual, Section II, page 14.

10. Grantee Contracting

If a non-profit private entity and a private entity that is not a non-profit entity both submit applications to a State/Tribe/Territory, the State/Tribe/Territory may give priority, based on a competitive review process, to the application submitted by the non-profit private entity in any case in which the State/Tribe/Territory determines that the quality of such application is equivalent to the quality of the application submitted by the other private entity [Section 1501(b) of the PHS Act, as amended].

F. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Implement a comprehensive breast and cervical cancer early detection screening program that includes the NBCCEDP program components delineated in the Purpose, Section A [Section 1501(a)(1–6)]. Descriptions of

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afford her insurance provider's deductible or required co-payment for the allowable screening or diagnostic procedure; (3) a woman whose insurance supports the allowable screening and diagnostic procedure but at intervals greater than those recommended by the NBCCEDP; and (4) a woman who does not have reasonable access to a provider included under her insurance coverage.

[3] CDC, through its delegation from the Secretary, is tasked with implementing its programs. Therefore, when questions regarding the programs and the statutes behind them arise, CDC may provide definitions or explanations of what the statute as a whole, or terms contained therein, mean, in order to ensure proper implementation of its programs. CDC is entitled to deference in its interpretation of such statutes. Because the NBCCEDP gives priority to serving low-income women, CDC interprets ''appropriate referrals'' to also mean ''affordable referrals.''

the NBCCEDP program components, including each component's minimum core expectations, are provided in Attachment 1.

b. Attend and participate in sponsored events: Attendance at sponsored training, meetings, site visits, reverse site visits, and conferences is required. Funds may be included in the budget request for this purpose.

2. CDC Activities

Provide technical assistance to Grantees to support their planning, implementation and evaluation of each NBCCEDP program component. Technical assistance from CDC may address:

a. Practical application of Public Law 101–354, including amendments to the law;

b. Design and implementation of program components;

c. Interpretation of current scientific literature related to the early detection of breast and cervical cancer;

d. Interpretation of program outcome, screening and surveillance data;

e. Overall operational planning and program management.

3. Assist With Training on Selected Topics.

4. Conduct Site Visits

Program Consultants may conduct site visits or coordinate reverse site visits to assess program progress and/or mutually resolve problems.

G. Application Content

Use the information in the Requirements (Section E), Recipient Activities (Section F and related attachments), and Evaluation Criteria (Section G) sections to develop the application content. Applications will be evaluated on the criteria listed in Section G. Because this is a competitive program announcement, CDC requires Applicants to submit certain data and performance indicators in order that it be considered in making funding decisions. The application, including budget, justification and appendices, should be no more than 125 double-spaced unbound pages, printed on one side of 8½ × 11'' paper, suitable for photocopying, with one inch margins and 12 point font. Applicants should number each page and include a header with the Applicant's program name. Please interpret the maximum page limits as a ceiling, rather than a goal.

1. Executive Summary (Maximum 4 Pages)

The applicant should provide a clear, concise summary to include the: (1) need for the program; (2) number and characteristics of women to be screened; (3) requested amount of Federal funding; and (4) past performance indicating the applicant's capability to implement the program.

2. Background and Need (Maximum 6 Pages, Including Matrix)

The applicant should describe:

a. The State, Territory, or Tribal breast and cervical cancer age-adjusted mortality rates averaged over five years and ranked nationally (States should use SEER or State Cancer Registry data for the period 1993–1997);

b. The State, Territory, or tribal incidence rates for breast and cervical cancer by age, race, and ethnicity (where available) (States should use data from their Cancer Registries for 1998 or the most recent year available);

c. The number of women who are at or below 250 percent of the Federal poverty level and uninsured, by age (18–39; 40–49; 50–64; 65+) and racial/ethnic distribution (if possible, use 1990 Census data, unless 2000 Census data is available); and

d. The unmet screening and rescreening needs of uninsured and under-insured women (where available).

Applicants are encouraged to present these data (a–d above) using the Background and Need matrix, Attachment 2.

e. The priority populations for screening, including supporting data and/or justification for their selection. Broadly, priority populations can be described as women who are racial, ethnic and/or cultural [4] minorities, such as American Indians, Alaska Natives, African-Americans, Hispanics, Asian and Pacific Islanders, lesbians, women with disabilities, and women who live in geographically or culturally isolated communities in urban and rural areas. The term priority populations, as defined above, will be used throughout this document.

Breast and cervical cancer death rates vary by race and ethnicity; therefore, applicants must review related state and local morbidity and mortality rates to identify specific priority populations in need of breast and cervical cancer screening in their geographic area. Programs should aim to eliminate racial health disparities by prioritizing populations that are under screened and/or disproportionately affected by breast and/or cervical cancer for recruitment and enrollment.

Regardless of the geographic area, priority for breast cancer screening should be given to women age 50 to 64 years of age. Priority for cervical cancer screening should be given to rarely [5] or never screened women.

f. The specific barriers to screening services that impede women in the priority populations from participating in breast and cervical cancer screening and diagnostic services.

3. Capability for Program Implementation (Maximum 10 Pages, Not Including Letters of Commitment)

a. Applicants should address their capability to implement the proposed activities as measured by their accomplishments as part of an existing or past NBCCEDP program or relevant past experiences funded by other sources.

(1) States, Territories, or Tribes currently receiving NBCCEDP funds should detail their accomplishments in operating a comprehensive breast and cervical cancer early detection program. Applicants should address accomplishments in program and fiscal management, infrastructure development, and service delivery by summarizing progress in meeting NBCCEDP fiscal year 2001 Program Progress Indicators.[6] These program progress indicators are listed in the NBCCEDP Policies and Procedures Manual, Section III, beginning on page 3. Applicants should use the most recent data available to summarize these indicators.

(2) Territories and Tribes not currently receiving CDC NBCCEDP funds should address relevant past experiences in conducting any of the NBCCEDP program components for cancer control, chronic disease control or other relevant areas.

b. *Letters of Commitment:* Applicants should include letters of commitment (dated within the last three months) from key partners, participants, and community leaders that detail their commitment to and participation in the proposed program. If the applicant is a Tribe, also include either of the following documentation, as appropriate: (1) A signed and dated tribal resolution supporting the application from the Indian Tribe served by the project. If the applicant includes more than one Indian Tribe, resolutions from all Tribes to be served must be

[4] Cultural minorities are defined as communities which, in order to preserve or protect cultural or religious beliefs or practices, limit contact with other people or the larger community.

[5] Rarely screened is defined by the NBCCEDP as a woman who has not received a Pap test during the past five years.

[6] Program Progress Indicators have been developed to provide a systematic approach for rapid assessment of program progress. Program progress indicators are defined as performance measures used to track critical processes over time to signify progress toward a particular goal or outcome of the program.

included; or (2) A letter of support for the application from the Board of Directors of an Urban Indian organization(s) or Indian Health organization(s), signed by the Board Chairman.

c. *Other Accomplishments:* Applicants should include information about any other accomplishments that reflect capability and capacity for implementing a breast and cervical cancer early detection program.

4. Work Plan (Maximum 30 Pages)

The applicant should develop a detailed work plan that, for each NBCCEDP program component, describes: proposed goals; measures of success related to goals; specific, measurable, attainable, realistic and time-phased objectives; and activities to attain the objectives. The minimum core expectations for each program component should be addressed in the work plan. Be reminded that descriptions of the NBCCEDP program components are included as Attachment 1.

The work plan should include a time table for program implementation that specifies dates for the accomplishment of all proposed activities. Applicants are encouraged to use the NBCCEDP work plan template available through the Internet at http://www.cdc.gov/cancer/nbccedp/training/index.htm. This template is included in the 30-page limit but may be single spaced.

Applicants should include an attachment to the work plan with realistic screening projections for fiscal year 2001–2002 that are based on past screening performance. Screening projections should be provided with the following detail: the number of women to be screened by the program by age, race, ethnicity and other identified priority populations (applicant's cultural minorities identified in the Background and Need section as priority populations). In addition, the applicant should include a projection of the number of rarely and never screened women to receive a Pap test. Projected screening levels for racial and ethnic populations should be based on population estimates of the number of women in the Program area who meet NBCCEDP age and income eligibility guidelines, as well as past screening performance. Applicants are encouraged to present the screening projections using the Screening Projections matrix, Attachment 3. Applicants with current NBCCEDP funding from CDC should provide a brief narrative justification that includes recent screening data supporting the projections.

If the applicant has submitted a request to the HCFA and received approval to provide Medicaid coverage for treatment to women screened under the NBCCEDP with breast or cervical cancer, or pre-cancerous conditions of the breast or cervix, complete Attachment 4, the Breast and Cervical Cancer Prevention and Treatment Act Form.

5. Organizational Structure (Maximum 15 Pages)

The applicant should provide the following supporting documents related to organizational structure:

a. An organizational chart (can be single spaced) indicating the placement of the proposed Program in the department or organization and the structure of the proposed breast and cervical cancer early detection program management and staffing;

b. Documentation of available resources in the State, Territory, or Tribe for the payment or reimbursement of breast and cervical cancer screening, including the Medicaid program;

c. The proposed schedule of fees and charges for breast and cervical cancer screening and diagnostic services, consistent with maximum Medicare reimbursement rates, if fees will be imposed (single line spacing is acceptable). Include a description of the use of the proposed schedule of fees and charges in the Program. In States, Territories, or Tribes where there are multiple Medicare rates and a single reimbursement rate is being proposed, the applicant must provide justification for approval.

d. Documentation of how the State, Territory, or Tribe will assure that funds will be used in a cost-effective manner.

e. A description of how the State, Territory, or Tribe will establish or enhance linkages with their State Cancer Registry program if the Applicant has a State Registry with the North American Association of Central Cancer Registries (NAACCR) certification. For more information about Cancer Registries see http://www.cdc.gov/cancer/npcr, http://www-seer.ims.nci.nih.gov, and for NAACCR certification see http://www.NAACCR.org.

6. Source Data for Matching Requirement (Maximum 5 Pages)

a. *Maintenance of Effort:* The applicant should detail the average amount of non-Federal dollars expended for breast and cervical cancer programs and activities made by a State, Territory, or Tribe for the two year period preceding the first Federal fiscal year of NBCCEDP funding. This amount will be used to establish the maintenance of effort baseline for current and future match requirements.

b. *Sources of Match:* The applicant should detail the State, Territory, or tribal allowable sources of matching funds for the Program and the estimated amounts from each. The applicant should document the procedures for determining the value of non-cash matching funds. Further information about the Matching Funds Requirement can be found in the NBCCEDP Policies and Procedures Manual, section II, pages 19–21 and page 35.

c. *Documentation of Match Received:* The applicant should describe procedures for documenting the actual amount of match received.

7. Budget With Justification (Maximum 7 Pages)

a. Provide a detailed line item-budget (can be single spaced) with a separate narrative justification (for both Federal and non-Federal funds) of all proposed operating expenses consistent with the program activities described in this announcement. The budget may include line items for personnel, fringe benefits, travel, contractors, consultants, equipment, administrative, and other expenses. Not less than 60 percent of Federal funds will be expended for screening, tracking, follow-up and other support services such as case management. Not more than 10 percent of Federal funds will be expended for administrative expenses. The following information is required for all contracts: (1) name of contractor; (2) method of selection; (3) period of performance; (4) scope of work; (5) method of accountability; and (6) itemized budget with justification for each contract.

b. A detailed line-item breakdown of the 60/40 distribution should be provided. A sample 60/40 budget breakdown is included in the NBCCEDP Policies and Procedures Manual, section II, page 38. For further information about the 60/40 requirement, please refer to the NBCCEDP Policies and Procedures Manual, section II, page 10.

c. The applicant should submit a completed Screening and Diagnostic Worksheet which is used to estimate the amount of funding needed to reimburse providers for allowable clinical services provided to eligible women served in your program. Further information about the Screening and Diagnostic Worksheet is provided in the NBCCEDP Policies and Procedures Manual, Section IV, pages 21–25. An electronic version of the Screening and Diagnostic Worksheet, an EXCEL spreadsheet, may be obtained through the program technical assistance contact listed in

Section L, Where To Obtain Additional Information.

d. To request Federal, direct-assistance assignees, include:

(1) number of assignees requested;

(2) description of the position and proposed duties;

(3) ability or inability to hire locally with financial assistance;

(4) justification for request;

(5) organizational chart and name of intended supervisor;

(6) opportunities for training, education, and work experiences for assignees; and

(7) description of assignee's access to computer equipment for communication with CDC (e.g., personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

H. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before June 27, 2001 submit the application to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

I. Evaluation Criteria (100 Points)

Applications will be evaluated individually against the criteria below which reflect an emphasis on disease burden and program quality. Funding for Tribes and Territories will be competitive based on review by a panel of independent reviewers. All applicants representing States will be funded. State applications will undergo technical acceptability reviews by independent reviewers.

1. Background and Need (20 Points)

The extent and clarity with which the applicant describes the disease burden, size of potentially eligible population, unmet screening needs, size, selection and characteristics of the priority populations and extent to which the applicant has identified barriers to care that can be addressed through program activities.

2. Capability for Program Implementation (10 Points)

The extent to which the applicant appears likely to be successful in implementing the proposed activities as measured by:

a. Prior performance reflected by the NBCCEDP program progress indicators or, for applicants not currently receiving NBCCEDP funds, their success as measured by relevant past experiences in conducting a similar program(s).

b. Letters of commitment from key partners, participants, and community leaders that detail their commitment to and participation in the proposed program. If the applicant is a Tribe, the inclusion of a tribal resolution(s) or letter of support from the Board of Directors is required.

c. Other accomplishments that reflect the capability of the applicant to implement a breast and cervical cancer screening program.

3. Work Plan (60 Points)

The degree of comprehensiveness and quality of the work plan represented by the goals, measures of success related to goals, objectives and activities to attain the objectives for each of the NBCCEDP program components and a time table for program implementation. The degree of comprehensiveness in addressing the minimum core expectations for each NBCCEDP program component within the work plan as detailed in the descriptions included as Attachment 1. The extent to which realistic screening projections are provided based on the applicant's past screening history (if applicable) and detailed separately for Pap tests and mammograms by the number of women to be screened for the 2001–2002 program year by age, race, ethnicity, and other priority populations identified by the applicant in the Background and Need section. In addition, the extent to which realistic screening projections are provided for Pap tests among rarely and never screened women.

4. Organizational Structure (10 Points)

The appropriateness of the applicant's organizational structure; documentation of the applicant's available resources for the payment or reimbursement of breast and cervical cancer screening, including the Medicaid program; the proposed schedule of fees consistent with Medicare reimbursement rates, if applicable; the assurance that funds will be used in a cost effective manner; and the description of linkages between the proposed program and the State Cancer Registry, if applicable.

5. Source Data for Matching Requirement (Not Weighted)

The extent to which the applicant provides clear evidence of maintenance of effort, sources of match, and a means to document actual match received.

6. Budget With Justification (Not Weighted)

The extent to which the proposed budget is reasonable, justified, consistent, and in compliance with this program announcement.

7. Human Subjects (Not Weighted)

The extent to which the application adequately addresses the requirement of 45 CFR Part 46 for the protection of human subjects. An application will be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

J. Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual progress reports, to be submitted no later than 90 days after each semiannual reporting period. All manuscripts published as a result of the work supported in part or whole by the cooperative agreement must be submitted with the progress reports.

2. Financial status report (FSR), no more than 90 days after the end of each budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For descriptions of each, see the Appendix.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

K. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 1501, 1502, 1507 and 1509 [42 U.S.C. 300k, 42 U.S.C. 300l, and 42 U.S.C. 300n–3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.919.

L. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Should you have questions after reviewing the contents of all the

documents, business management technical assistance may be obtained from: Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 01038.

Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2752, Email address: gld1@cdc.gov.

For program technical assistance, contact: Amy DeGroff, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724, Telephone number: (770) 488–4248, Email address: asd1@cdc.gov.

Dated: May 22, 2001.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–13498 Filed 5–29–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on scientific disputes between the Center for Devices and Radiological Health and sponsors, applicants, and manufacturers.

Date and Time: The meeting will be held on June 4, 2001, 10:30 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 20B, 9200 Corporate Blvd., Rockville, MD.

Contact: Les Weinstein, Center for Devices and Radiological Health (HFZ–5), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–6220, ext. 119, FAX 301–827–2565, lsw@cdrh.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 10232. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote regarding a scientific dispute between the agency and Lifecore Biomedical, Inc., related to the approvability of a premarket approval application for Intergel, an adhesion prevention solution. Background information and questions for the committee will be available to the public on June 1, 2001, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 31, 2001. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m. Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the dispute before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 31, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the June 4, 2001, Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 24, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–13639 Filed 5–25–01; 3:08 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Leukemia and Other Hematological Diseases Among Cleanup Workers in Ukraine Following the Chornobyl Accident

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Leukemia and Other Hematological Diseases Among Cleanup Workers in Ukraine Following the Chornobyl Accident. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* A case-control study will be conducted to investigate the risk of radiation-induced leukemia and other hematological diseases among Chernobyl cleanup workers in Ukraine. Cases and controls (or proxies) will be interviewed to provide details of their work during the Chornobyl clean-up operation. The interview responses combined with environmental measurements will permit individual bone marrow dose estimates to be calculated for each case and control. Dose estimates will be used to calculate the risk of leukemia and other hematological diseases associated with low-dose and low dose-rate radiation exposure. This information, which is essential for radiation protection, is currently not available and standards presently are based on information available only by extrapolation from high-dose, high dose-rate data on A-bomb survivors in Japan. *Frequency of Response:* One time only. *Affected Public:* Ukrainian Chornobyl clean-up workers. *Type of respondents:* Cases, controls, and proxies for deceased subject. *Estimated Number of Respondents:* 700. *Estimated Number of Responses per Respondent:* Variable, about 50. *Average Burden Hours Per Response:* 0.75 hour. *Estimated Total Annual Burden Hours Requested:* 400 hours (interviews to be conducted over 18-month period). There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collectionof information is necessary for the proper performance of the National Cancer Institute, including whether the information will have practical utility; (2) evaluate the accuracy of the NCI's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the enhance the quality utility, and clarity of the information to be collected; (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Terry L. Thomas, National Cancer Institute, EPS 7100, 6120 Executive Boulevard, Rockville, MD, 29892–7238, or call the non-toll-free number (301) 496–6600.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 30, 2001.

Dated: May 16, 2001.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–13484 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Improving DNA, RNA and Protein availability in Fixed Tissue.

Date: June 15, 2001.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, 6130 Executive Boulevard, Conference Room F, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13539 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 55b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Research in State and Community Tobacco Control.

Date: June 17–18, 2001.

Time: 6:30 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C.M. Kerwin, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8039, Rockville, MD 20892–7405, 301/496–7421.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13540 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spores in Skin Cancer.

Date: June 21–22, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Brian E. Wojcik, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, room 8019, Bethesda, MD 20892, 301/402–2785.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13542 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel NCCAM SEP C–12.

Date: June 18–20, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John C. Chah, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Rm. 106, Bethesda, MD 20892–5495, 301–402–4334, chahj@mail.nih.gov.

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13546 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel

Date: June 24–26, 2001.

Time: 7:30 p.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Newark Gateway, Raymond Boulevard, Newark, NJ 07102.

Contact Person: Michael A. Sesma, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048, sesmam@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13541 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, June 13, 2001, 8:30 a.m. to June 15, 2001, 5 p.m. Hawthorne Suites, 300 Meredith Drive, Durham, NC, 27713 which was published in the **Federal Register** on May 15, 2001, FR 66: 268731.

The starting date and time of the National Institute of Environmental Health Sciences Special Emphasis Panel will change to June 12, 2001, at 8:30 p.m., from the previously advertised June 13, at 8:30 a.m. The meeting is closed to the public.

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13543 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended

for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: June 3–5, 2001.

Closed: June 3, 2001, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: June 4, 2001, 8:15 a.m. to 11: a.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: June 4, 2001, 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Open: June 4, 2001, 12:30 p.m. to 1:45 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: June 4, 2001, 1:45 p.m. to 2:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Open: June 4, 2001, 2:10 p.m. to 4:45 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: June 4, 2001, 4:45 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852.

Closed: June 4, 2001, 6:30 p.m. to 10:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: June 5, 2001, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Story C. Landis, PHD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13544 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: June 14, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Delaware Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: L Tony Beck, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003, 301–443–0913, lbeck@mail.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Workgroup.

Date: June 14, 2001.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6000 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–2926.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 17–18, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: L. Tony Beck, Phd., Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892–7003, 301–443–0913, lbeck@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13545 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 18, 2001.

Time: 8:30 a.m. to 6 p.m..

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotel, One Bethesda Metro Center; Bethesda, MD 20814.

Contact Person: Richard E. Weise, Scientific Review Administrator, National Institute of Mental Health, DEA, National Institute of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1340, rweise@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 7, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institute of Health, 6001 Executive Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I. Sommers, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, dsommers@mail.nih.gov.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 12, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PHD, Associate Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–13547 Filed 5–29–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Availability of the Report on Carcinogens, Ninth Edition

Background

The National Toxicology Program (NTP) announces the availability of the Report on Carcinogens, Ninth Edition.

The Report on Carcinogens (RoC) (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301 (b) (4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals. The Report on Carcinogens, Ninth Edition was submitted to Congress on May 15, 2000.

The new entries for the Report on Carcinogens, Ninth Edition have undergone a multiphased peer review. This review included two Federal and one non-government, scientific peer reviews and public comment and review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the Report. The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Home Page web site at http://ntp-server.niehs.nih.gov/ or by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, at the address listed below.

The Report on Carcinogens, Ninth Edition, which was publicly released on May 15, 2000, contains 218 entries, 14 of which have not appeared in earlier Reports. This Report also reclassifies 1,3-butadiene, cadmium and cadmium compounds, Direct Black 38, Direct Blue 6, ethylene oxide, and silica (crystalline, respirable size) from reasonably anticipated to be a human carcinogen to known to be a human carcinogen, with corresponding revisions of the earlier entries for these chemicals. Two substances, saccharin and ethyl acrylate, have been removed from the Report on Carcinogens, Ninth Edition as a result of formal reviews for delisting. In addition, the NTP published an addendum to its Report on Carcinogens, Ninth Edition on January 19, 2001. This addendum changes the listing of 2,3,7,8-tetrachlorodibenzo-p-dioxin CAS No. 1746–01–6, also known as ''TCDD'' or ''Dioxin'', to a known to be human carcinogen, from its earlier listing as reasonably anticipated to be a human carcinogen. Publication of this addendum followed the ruling by the US Court of Appeals for the District of Columbia to dismiss a request for an injunction to prevent the listing of TCDD as a known to be human carcinogen in the Report on Carcinogens, Ninth Edition. The proposal to list TCDD as a known human carcinogen was reviewed in the same way and at the same time as the other new listings for the Report on Carcinogens, Ninth Edition.

The Report on Carcinogens is an informational scientific and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a carcinogenic hazard to human health. It serves as a meaningful and useful compilation of data on the (1) carcinogenicity, genotoxicity, and biologic mechanisms of the listed substances in humans and/or animals, (2) the potential for exposure to these substances, and (3) the regulations promulgated by Federal agencies to limit exposures. The Report does not present quantitative assessments of carcinogenic risk, an assessment that defines the conditions under which the hazard may be unacceptable. Listing of substances in the Report, therefore, does not establish that such substances present carcinogenic risks to individuals in their daily lives. Such formal risk assessments are the purview of the appropriate Federal, State, and local health regulatory and research agencies.

Hard copies of the Report on Carcinogens, Ninth Edition can be obtained by contacting the NIEHS Environmental Health Information Service, ATTN: Order Processing, PO Box 12510, Research Triangle Park, NC 27709–2510, fax number (919) 541–0763, email: ehis@niehs.nih.gov. The Report on Carcinogens, Ninth Edition is also available on the internet and can be accessed from the NIEHS Environmental Health Information Service Home Page

at: http://ehis.niehs.nih.gov/ or from the NTP Home Page at: http://ntp-server.niehs.nih.gov/.

Questions or comments concerning the Report on Carcinogens, Ninth Edition should be directed to: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, email: jameson@niehs.nih.gov.

Dated: April 17, 2001.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES OR MIXTURES NEWLY LISTED, UPGRADED OR DELISTED IN THE REPORT ON CARCINOGENS, NINTH EDITION

Agent, substance or mixture	Primary uses or exposures	Action
Alcoholic Beverage Consumption	Consumption of alcoholic beverages	Listed as a known to be human carcinogen.
1,3-Butadiene/CAS# 106–99–0	Used primarily in the manufacture of synthetic rubber.	Listing upgraded to a known to be human carcinogen.
Cadmium and Cadmium Compounds/CAS# 7440–43–9.	Used in batteries, coating and plating, plastics and in alloys.	Listing upgraded to a known to be human carcinogen.
Chloroprene/CAS# 126–99–8	Used as a monomer for industrial rubber products, and as a component of adhesives in food packaging.	Listed as a reasonably anticipated to be human carcinogen.
Diesel Exhaust Particulates	Diesel engine exhaust	Listed as a reasonably anticipated to be human carcinogen.
Dyes Metabolized To Benzidine (Benzidine Dyes As A Class).	Benzidine-based dyes are used primarily for dyeing textiles, paper and leather products.	Listed as known to be human carcinogens. This action also resulted in the upgrading of the listing of Direct Black 38, Direct Blue 6 to known to be human carcinogens.
Environmental Tobacco Smoke	''Passive'' inhalation of tobacco smoke from environmental sources.	Listed as a known to be human carcinogen.
Ethyl Acrylate/CAS# 140–88–5	Monomer used to produce polymers for use in latex paints, textiles, etc.	Removed (delisted) from the RoC.
Ethylene Oxide/CAS# 75–21–8	Industrial chemical used as a synthetic intermediate and also widely used in the health care industry as a sterilant.	Listing upgraded to a known to be human carcinogen.
Isoprene/CAS# 78–79–5	Widely used in the production of isoprene-butadiene copolymers..	Listed as a reasonably anticipated to be human carcinogen.
Phenolphthalein/CAS# 77–09–8	Used as a laboratory reagent and in over-the-counter laxative preparations.	Listed as reasonably anticipated to be a human carcinogen.
Saccharin/CAS# 218–44–9	Used primarily as a nonnutritive sweetening agent.	Removed (delisted) from the RoC.
Silica, Crystalline (Respirable Size)/CAS# 7631–86–9.	Exposure from mining of coal and other minerals, stone cutting, production of glass and ceramics and in occupations such as sandblasting, polishing and grinding.	Listing upgraded to a known to be human carcinogen.
Smokeless Tobacco	Oral use of smokeless tobacco products	Listed as a known to be human carcinogen.
Strong Inorganic Acid Mists Containing Sulfuric Acid.	Present in a wide variety of industries, especially the finishing of metal and fertilizer production.	Listed as a known to be human carcinogen.
Tamoxifen/CAS# 10540–29–1	Used as an anti-estrogen drug and in the palliative treatment of breast cancer.	Listed as a known to be human carcinogen.
2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD)/CAS# 1746–01–6.	Found as a contaminant in the production of some pesticides and other commercial products.	Listing upgraded to a known to be human carcinogen.
Tetrafluoroethylene/CAS# 116–14–3	Used in the production of polytetrafluoroethylene.	Listed as a reasonably anticipated to be human carcinogen.
Tobacco Smoking	Inhalation of tobacco smoke	Listed as a known to be human carcinogen.
Trichloroethylene/CAS# 79–01–6	Used mainly as an industrial solvent for vapor degreasing and cold cleaning of fabricated metal parts.	Listed as a reasonably anticipated human carcinogen.
Solar UV Radiation And Exposure To Sunlamps And Sunbeds.	Solar and artificial sources of ultraviolet radiation.	Listed as known to be human carcinogens.

[FR Doc. 01–13485 Filed 5–29–01; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4687–N–01]

RIN 2577–AC08

Public Housing Assessment System (PHAS); Revised Timetable for Issuance of Management Operations Official Scores and PHAS Advisory Scores; and Notice of Intent To Commence Informal Meetings on PHAS

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice of revised timetable for issuance of management operations official scores and PHAS advisory scores and intent to commence informal meetings on PHAS.

SUMMARY: This document advises that the Management Operations indicator under the Public Housing Assessment System (PHAS) will continue to be the official assessment for public housing agencies (PHAs) with fiscal years ending on June 30, 2000, through June 30, 2001. Accordingly, HUD will issue these management scores and PHAS advisory scores as provided in the Supplementary Information section of this document. Further, this document notifies the public of the intent of the Department to conduct informal consultations with PHAs, public housing residents, representatives of PHAs and residents, housing advocacy representatives, governmental representatives, and such other groups that HUD may identify regarding ways to improve HUD's on-going procedures for assessing the performance of public housing agencies. It is expected that these informal consultations will commence within the near future and occur periodically through November, 2001, and thereafter as necessary on dates and at locations provided by the Department.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing, Office of Troubled Agency Recovery Attention: Judy Wojciechowski, Director of PHAS Operations, U. S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4112, Washington, D.C. 20410 or the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U. S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at (888)-245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION: HUD's rule implementing the PHAS was published on September 1, 1998 (64 FR 46596), and became effective October 1, 1998. Although the PHAS regulation became effective October 1, 1998, the final rule provided a one year delayed implementation date.

On January 11, 2000 (65 FR 1712), HUD issued an amended PHAS rule. The amendments were prompted by both statutory and administrative changes to the PHAS and comments from interested parties. The amended rule deferred full implementation of PHAS for PHAs with fiscal year end dates of September 30, 1999, and December 31, 1999. The January 11, 2000 rule provided that these PHAs would receive an assessment score based only on the Management Operations indicator (MASS).

On June 6, 2000 (65 FR 36042), HUD issued a technical correction to the January 11, 2000, final rule and one of the corrections further deferred full implementation of PHAS for PHAs with fiscal years ending on and after June 30, 2000.

The Conference Report 106–988 for the Department's Fiscal Year 2001 Appropriations Act (Pub L. 106–377, approved October 27, 2000), directed the Department to, among other things, continue to assess the accuracy and effectiveness of the PHAS system, perform a statistically valid test of PHAS, conduct a thorough analysis of the results, and have the methodology and results reviewed by an independent expert before taking any adverse action against a PHA based solely on its PHAS score. A report addressing these issues was provided to HUD's Committee on Appropriations on March 1, 2001.

Consistent with the direction of the conferees, HUD issued a PIH notice (Notice PIH 2001–5), issued January 19, 2001, that provided prior to March 1, 2001, HUD would not take adverse action against PHAs solely on the basis of the PHAS scores. ''Adverse action'' was defined as troubled designations based upon the official PHAS composite score. In accordance with the PIH notice, all official troubled/substandard designations (with the exception of substandard management operations indicator designations), beginning with PHAs with June 30, 2000, fiscal year end dates, were held in abeyance prior to HUD's March 1, 2001, submission date.

Given these recent events, HUD has determined that full implementation of PHAS should be further deferred until after June 30, 2001. Accordingly, PHAs with fiscal years ending June 30, 2000, through June 30, 2001, will receive an assessment solely on the basis of HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902, subpart D of the PHAS regulations (PHAS Indicator #3, Management Operations), as amended by the January 11, 2000, final rule, and corrected by the June 6, 2000, PHAS Technical Correction.

Further, it is the Department's intent to meet with public housing stakeholders (such as PHAs, representatives of PHAs, public housing residents, representatives of PHAs and residents, housing advocacy representatives, governmental representatives and other groups HUD may identify) and seek their input to identify any necessary modifications to the rule and to publish, if appropriate, a new amended PHAS rule to address changes. Through these meetings, HUD is not seeking consensus advice, but only feedback on experiences with the PHAS, identification of problems and recommendations for modifications. In the interim, modified PHAS scores, as established by appropriate procedures and notification, may be issued to PHAs with fiscal years ending on September 30, 2001, December 31, 2001, March 31, 2002, and June 30, 2002. The following sets out the timetable for issuance of PHAS advisory scores and official MASS scores.

Revised Timetable

PHAs With Fiscal Years Ending 6/30/00, 9/30/00, 12/31/00, 3/31/01 and 6/30/01

For PHAs with fiscal years ending June 30, 2000, September 30, 2000, December 31, 2000, March 31, 2001, and June 30, 2001, HUD will not issue PHAS scores for the fiscal years ending on these dates. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

Management Assessment Score. PHAs with a fiscal year ending June 30, 2000, September 30, 2000, December 31, 2000, March 31, 2001, or June 30, 2001, will receive an official assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902,

subpart D of the PHAS regulation (PHAS Indicator #3, Management Operations).

1. A PHA may be designated troubled (substandard management) as a result of the management operations assessment score.

2. A PHA may appeal its management operations score in accordance with 24 CFR 902.69.

PHAS Advisory Score. PHAs with a fiscal year ending June 30, 2000, September 30, 2000, December 31, 2000, March 31, 2001, or June 30, 2001, will be issued a PHAS advisory score. The PHA must comply with the requirements of 24 CFR part 902 (the PHAS regulation) so that HUD may issue the advisory score.

1. Physical inspections will continue to be performed by HUD, as part of the PHAS advisory score process, using HUD's Uniform Physical Condition Standards inspection protocol. However, PHAs with an overall score in the PHAS Physical Condition indicator of at least 80 percent of the 30 available points (or 24 points) will not be inspected this fiscal year. The physical inspection scores from last year will be utilized to calculate the PHAS advisory scores for these PHAs.

2. All PHAs are required to document the correction or abatement of exigent health and safety hazards in accordance with PHAS requirements and should provide Field Offices with certification of such action(s).

3. PHAs must comply with the reporting requirements of PHAS, and be assessed by HUD under the PHAS on an advisory basis.

4. PHAs may not appeal advisory scores, but are encouraged to take advantage of the technical review process for the Physical Condition indicator and the Resident Service and Satisfaction indicator (24 CFR part 902.68). Also available under the Physical Condition indicator is the database adjustment (24 CFR part 902.25).

5. Notwithstanding the automatic designations generated by the Department's technological systems, all designations other than MASS troubled (substandard management) will be held in abeyance, as well as any incentives that are awarded for such designations.

PHAs With Fiscal Years Ending After 6/30/01

Since it is the intent of the Department to conduct informal consultations with PHAs, residents, and others interested in public housing, on ways to improve HUD's on-going methodology and procedures for assessing the performance of public housing agencies, and these informal consultations are expected to commence within the near future and continue periodically throughNovember 2001; PHAs with fiscal years ending after June 30, 2001 through June 30, 2002, may be issued modified PHAS scores as established by appropriate procedures and notification.

Dated: May 22, 2001.

Gloria Cousar,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

Barbara Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 01–13487 Filed 5–29–01; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–0680–7123–MA–6763]

Prohibition of Use of Firewood Containing Nails, Screws, and Other Metal Hardware Within the Boundaries of the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas, San Bernardino County, CA

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Notice of the implementation of a supplementary rule banning the use of firewood containing nails, screws, and other metal hardware upon the public lands within the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas, San Bernardino County, California.

SUMMARY: Order: A supplementary rule will take effect that will ban the use of firewood containing nails, screws, and other metal hardware in the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas. The supplementary rule will be cited under 43 CFR 8365.1–6, Visitors Services, Rules of Conduct, Supplementary Rules. The text of these rules follows:

1. Ban on Firewood Containing Nails, Screws, and Other Metal Hardware Within the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas.

(a) Due to an ongoing problem with nails, screws, and other metal hardware from pallets and construction lumber causing damage to vehicle tires and a safety problem for the visitors to the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas, there is a demonstrated need for the removal of firewood containing nails, screws, and other metal hardware and elimination of their use within the management areas.

(b) Upon the Public Lands within the established boundaries of the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas, no person shall bring in, dispose of or possess any firewood containing nails, screws, and other metal hardware.

Background: The purpose of this supplementary rule is to protect visitors to the El Mirage Cooperative Management Area; and Rasor, Johnson Valley, Stoddard Valley, and the Dumont Dunes OHV Recreation Areas from serious injury to themselves as well as damage to their vehicle's tires as a result of discarded nails, screws, and other metal hardware from firewood.

At this time, nails, screws, and other metal hardware are evident in areas of concentrated use and around high traffic areas. This regularly results in tire damage to visitor's vehicles and to Bureau patrol vehicles. Falling or stepping on nails, screws, or other metal hardware continues to be a hazard to campers who prefer to utilize well used camping areas.

EFFECTIVE DATE: This rule will take effect on the date of June 1, 2001.

FOR FURTHER INFORMATION CONTACT: Barry Nelson, Chief Ranger, Bureau of Land Management, 2601 Barstow Road, Barstow, California 92311; or call (760) 252–6070.

SUPPLEMENTARY INFORMATION: Area maps, Management Area brochures, and copies of the Management Plans are available by contacting the above personnel.

Authority for this supplemental rule is found in 43 CFR 8365.1–6. Violation of this rule is punishable by a fine not to exceed $100,000/or imprisonment not to exceed 12 months.

Dated: May 9, 2001.

Mike Pool,

California State Director.

[FR Doc. 01–13557 Filed 5–29–01; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–894 (Final)]

Certain Ammonium Nitrate From Ukraine

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: May 22, 2001.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On March 7, 2001, the Commission established a schedule for the conduct of the final phase of the subject investigation (66 FR 14933, March 14, 2001). The Department of Commerce notified the Commission on May 17, 2001, that the date for its final determination in the investigation was extended from June 18, 2001 to July 18, 2001. The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than July 16, 2001; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 19, 2001; the prehearing staff report will be placed in the nonpublic record on July 11, 2001; the deadline for filing prehearing briefs is July 18, 2001; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 24, 2001; the deadline for filing posthearing briefs is July 31, 2001; the Commission will make its final release of information on August 16, 2001; and final party comments are due on August 20, 2001.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–13467 Filed 5–29–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 27, 2000, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropopoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 30, 2001.

Dated: May 14, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–13446 Filed 5–29–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

AGENCY: Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 5, 2001, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 29, 2001.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 14, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–13447 Filed 5–29–01; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before July 16, 2001. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–01–23, 2 items, 2 temporary items). Files pertaining to compensation cases for work-related injury or illness involving employees paid with non-appropriated funds. Included are applications for compensation with supporting information, examining physicians reports, investigative reports, information substantiating claims, and Department of Labor forms. Also included are electronic copies of documents created using electronic mail and word processing.

2. Department of Defense, Office of the Inspector General (N1–509–01–1, 6 items, 4 temporary items). Investigative data maintained electronically that is used to manage investigations conducted by the Defense Criminal Investigative Service. Included are master files, documentation, outputs, and electronic copies of documents created using electronic mail and word

processing. Recordkeeping copies of selected case files were previously approved for permanent retention. In this schedule, an extract of the master file consisting of data pertaining to permanent case files, along with system documentation, is proposed for permanent retention.

3. Department of Health and Human Services, Health Care Financing Administration (N1–440–01–1, 8 items, 8 temporary items). Records relating to the enrollment of providers and suppliers into the Medicare program. Records include enrollment forms, copies of professional licenses, certifications, registrations, and resumes. Electronic copies of documents created using electronic mail and word processing are also included.

4. Department of the Navy, Agency-wide (N1–NU–01–1, 5 items, 5 temporary items). Reports and related records of non-criminal investigations into allegations of lost or compromised security-classified information. This schedule reduces the retention period for these records, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing that pertain to these records and to other previously scheduled records relating to non-criminal investigations and inquiries.

5. Department of State, U.S. Mission to the Organization for Economic Cooperation and Development (N1–84–01–1, 2 items, 1 temporary item). Electronic copies of documents created using electronic mail and word processing that pertain to negotiations relating to the MultilateralAgreement on Investment. Recordkeeping copies of these files are proposed for permanent retention.

6. Department of the Treasury, Bureau of the Public Debt (N1–53–01–5, 30 items, 30 temporary items). Division of Accounts and Reconcilement records consisting of outputs from previously scheduled electronic systems, including the Series HH/H Bond System, the Matured Unredeemed Bond System, the United States Savings Bond System, and the Public Debt Accounting and Reporting System. Records consist of printouts of bond transaction reports. Also included is an on-line tracking system for matured unredeemed bonds and electronic copies of documents created using electronic mail and word processing applications.

7. Department of the Treasury, Treasury Inspector General for Tax Administration (N1–56–01–5, 23 items, 22 temporary items). Records relating to administrative, audit, and investigative functions transferred from the Internal Revenue Service (IRS). Included are such records as correspondence, audit reports, special studies, routine investigative case files, exhibits, receipts, logs, and working papers. These records were previously approved for disposal in schedules submitted by the IRS. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative case files are proposed for permanent retention.

8. Judicial Review Commission on Foreign Asset Control, Agency-wide (N1–220–01–1, 4 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing. Recordkeeping copies of correspondence, hearings, reports, and files accumulated by Commissioners and staff members are proposed for permanent retention.

9. National Archives and Records Administration, Agency-wide (N1–64–01–2, 7 items, 7 temporary items). Records relating to the recruitment and re-certification of members of the Senior Executive Service, the administration of the Family Medical Leave Act, and appeals of adverse actions submitted to the Merit System Protection Board. This schedule also increases the retention period for Personal Injury files covered under General Records Schedule 1, item 31. Also included are electronic copies of documents created using electronic mail and word processing.

10. Office of Government Ethics. (N1–522–01–2, 2 items, 2 temporary items). Forms and related records used to process requests for reasonable accommodation equipment or services made by employees with disabilities. Electronic copies of records created using electronic mail and word processing are also included.

Dated: May 22, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–13494 Filed 5–29–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material—Revision to include burden for license conditions and additional burden for transferring a license.

2. Current OMB approval number: 3150–0017.

3. *How often the collection is required:* On occasion. Reports are submitted upon license transfer or as events occur. Recordkeeping must be performed on an on-going basis.

4. *Who is required or asked to report:* Persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

5. *The number of annual respondents:* 6552 (1,872 NRC licensees and 4680 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 2131 (608 hours for NRC licensees [321 reporting + 287 recordkeeping] and 1523 hours for Agreement State licensees [803 reporting + 720 recordkeeping]).

7. *Abstract:* The NRC's regulations in 10 CFR part 30 establish rules, applicable to all persons in the United States, governing domestic licensing of radioactive byproduct material. The NRC has identified two sections of 10 CFR part 30 that contain burden that has not been previously captured in the supporting statement for 10 CFR part 30. This burden is submitted as an addition to the current 10 CFR part 30 clearance. In 10 CFR 30.34(b), the NRC requires the submittal of information that may not have been required on the previously submitted Form 313, ''Application for Material License.'' In addition, 10 CFR 30.34(e)(4) permits the NRC to impose additional conditions in the license under certain circumstances. These conditions may require additional reporting and recordkeeping requirements. The conditions are used in conjunction with the requirements in Title 10 of the Code of Federal Regulations (10 CFR).

Submit, by July 30, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, Maryland. OMB clearance requests are available at the NRC web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV*.

Dated at Rockville, Maryland, this 22nd day of May 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–13492 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Proposed Rule, 10 CFR part 50, Decommissioning Trust Provisions.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Written notification to the NRC is required when a licensee needs to materially amend its trust agreement to make it consistent with the proposed rule and guidance, or when a license transfer is planned, or whenever a licensee intends to make a disbursement or payment (other than for ordinary administrative expenses) from the trust, escrow account, Government fund, or other account.

5. *Who will be required or asked to report:* Part 50 licensees.

6. *An estimate of the number of responses:* 166 responses (Approximately 110 licensees would need to revise their trust agreements, approximately 55 will make material changes to its trust agreement and 1 licensee will make an out of the ordinary disbursement.

7. *The estimated number of annual respondents:* Approximately 110 licensees per year.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 3,788 hours

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The NRC is proposing to amend its regulations on decommissioning trust agreements to require that the trust provisions contain general terms and conditions that the NRC believes are required to ensure that funds in the trusts will be available for their intended purpose. The proposed amendment would require that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or whose operations are regulated by a State or Federal agency. The amendment would also require a licensee to notify the NRC in writing when it proposes to materially amend its agreement and when a licensee intends to make a disbursement or payment (other than payment of ordinary administrative expenses). As an accompaniment to this rulemaking, the NRC intends to update Regulatory Guide 1.159, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors,'' to include sample trust fund language, terms, and conditions.

Submit, by June 29, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of information be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. The proposed rule indicated in ''The title of the information collection'' is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by June 29, 2001; Amy Farrell, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–7318.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 23rd day of May, 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–13491 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 55.59 for Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Energy Corporation (DEC, the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensed operator requalification examinations for the Oconee Nuclear Station, Units 1, 2, and 3 to be rescheduled. The requested exemption would extend the completion date for

the examinations from June 4, 2001, to July 13, 2001. The proposed action is in accordance with the licensee's application for exemption dated March 6, 2001.

The Need for the Proposed Action

The proposed action would extend the current Oconee Nuclear Station, Units 1, 2, and 3 requalification program from June 4, 2001, to July 13, 2001. To require the licensee's operators and staff to support the comprehensive examination and operating tests scheduled during the 24-month requalification cycle could have a detrimental effect on the public interest because it would remove qualified operators from refueling operations and place them into the training program, which could interfere with the current Oconee Unit 2 refueling outage schedule. Further, this one-time exemption will provide additional operator support during plant shutdown conditions, which would provide a safety enhancement during plant shutdown operations and post-maintenance testing. The affected licensed operators will continue to demonstrate and possess the required levels of knowledge, skills, and abilities needed to safely operate the plant throughout the transitional period via continuation of the current satisfactory licensed operator requalification program. Upon completion of the examinations on July 13, 2001, the follow-on cycle will end on March 8, 2003. Future annual requalification cycles will run from March to March.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no environmental impacts associated with the extension of the operator requalification examinations from June 4, 2001, to July 13, 2001. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on May 18, 2001, the staff consulted with the South Carolina State official, Mr. Henry Porter of the Division of Waste Management, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 6, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov*≤ (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 24th day of May 2001.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–13606 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on June 12, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss proprietary information per 5 U.S.C. 552b(c)(4) pertinent to General Electric Nuclear Energy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 12, 2001–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss potential issues for consideration by the NRC staff pertaining to its review of applications for core power uprates. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, General Electric Nuclear Energy, the ACRS staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301–415–

8065) between 7:30 a.m. and 4:30 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 22, 2001.

James E. Lyons,

Associate Director for Technical Support.

[FR Doc. 01–13488 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of May 28, June 4, 11, 18, 25, July 2, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville Maryland.

STATUS: Public and Closed.

Matters To Be Considered

Week of May 28, 2001

Wednesday, May 30, 2001
10:25 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of June 4, 2001—Tentative

Tuesday, June 5, 2001
9:25 a.m.—Affirmation Session (Public Meeting) (If needed)
2:00 p.m.—Discussion of Management Issues (Closed-Ex. 2)
Wednesday, June 6, 2001
10:30 a.m.—All Employees Meeting (Public Meeting)
1:30 p.m.—All Employees Meeting (Public Meeting)

Week of June 11, 2001—Tentative

Thursday, June 14, 2001
9:55 a.m.—Affirmation Session (Public Meeting) (If needed)
10:00 a.m.—Meeting with Nuclear Waste Technical Review Board (Public Meeting)
1:30 p.m.—Briefing on License Renewal Program (Public Meeting) (Contact: David Solorio, 301–415–1973)

Week of June 18, 2001—Tentative

There are no meetings scheduled for the Week of June 18, 2001

Week of June 25, 2001—Tentative

Wednesday, June 27, 2001
9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of July 2, 2001—Tentative

There are no meetings scheduled for the Week of July 2, 2001

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at

http://www.nrc.gov/SECY/smji/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving the Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: May 24, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–13605 Filed 5–25–01; 10:16 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 7, 2001 through May 18, 2001. The last biweekly notice was published on May 16, 2001 (66 FR 27174).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public

Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 29, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: May 1, 2001.

Description of amendments request: The proposed amendments would revise the pressure-temperature limits curves contained in Technical Specification 3.4.9, ''RCS Pressure and Temperature (P/T) Limits.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed License Amendments Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The changes to the calculation methodology for the pressure-temperature limits are based on American Society of Mechanical Engineers (ASME) Code Case N–640, ''Alternative Reference Fracture Toughness for Development of P–T Limit Curves for ASME Section XI, Division 1,'' and provide adequate margin in the prevention of a non-ductile type fracture of

the reactor pressure vessel. The code case was developed based upon the knowledge gained through years of industry experience. The pressure-temperature limits developed using the allowances of ASME Code Case N–640 provide more operating margin. However, experience gained in the areas of fracture toughness of materials and pre-existing undetected defects shows that some of the existing assumptions used for the calculation of pressure-temperature limits are unnecessarily conservative and unrealistic. Therefore, use of the allowances of ASME Code Case N–640 in developing the pressure-temperature limits will provide adequate protection against nonductile-type fractures of the reactor pressure vessel.

Development of the revised BSEP [Brunswick Steam Electric Plant], Unit 1 and 2 pressure-temperature limits was performed using the approved methodologies of 10 CFR 50, Appendix G, and using the allowances of ASME Code Case N–640. The pressure-temperature limits generated using these methods ensure the pressure-temperature limits will not be exceeded during any phase of reactor operation. Therefore, the probability of occurrence and the consequences of a previously analyzed event are not significantly increased. Finally, the proposed changes will not affect any other system or piece of equipment designed for the prevention or mitigation of previously analyzed events.

Thus, the probability of occurrence and the consequences of any previously analyzed event are not significantly increased as the result of the proposed changes to the pressure-temperature limits.

2. The Proposed License Amendments Will Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed changes provide more operating margin in the pressure-temperature limits for hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality, with the benefits being primarily realizable during the pressure tests. The changes also extend the pressure-temperature limits for use up to 32 EFPY [effective full-power years] of operation. However, operation in the ''new'' regions of the pressure-temperature limits has been analyzed and will provide adequate protection against a nonductile-type fracture of the reactor pressure vessel. Otherwise, the proposed pressure-temperature limits do not result in any new or unanalyzed operation of any system or piece of equipment important to safety and, as a result, the possibility of a new type event is not created.

3. The Proposed License Amendments Do Not Involve a Significant Reduction in a Margin of Safety

The revised pressure-temperature limits provide more operating margin and operational flexibility than the existing pressure-temperature limits. With the increased operational margin, a reduction in the safety margin results with respect to the existing limits. However, the industry experience since the inception of pressure-temperature limits confirms that some of the existing methodologies used to develop pressure-temperature limits are unrealistic and unnecessarily conservative. Accordingly, ASME Code Case N–640 takes advantage of this acquired knowledge by establishing more realistic methodologies for the development of pressure-temperature limits. Therefore, operational flexibility is gained and an acceptable margin of safety to reactor pressure vessel non-ductile type fracture is maintained. Evaluation of the revised pressure-temperature limits for use up to 32 EFPY was performed using 10 CFR 50 and ASME Code Case N–640; thus, the margin of safety is not significantly reduced as the result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Patrick M. Madden, Acting.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: April 26, 2001.

Description of amendment request: The proposed amendment would add Section 6.22, ''Reactor Coolant Pump Flywheel Inspection Program'' to Section 6, ''Administrative Controls'' of the Technical Specifications (TSs) and relocate the requirements of TS 3/4.4.10, ''Reactor Coolant System, Structural Integrity'' to the Millstone Unit No. 2 Technical Requirements Manual (TRM). The Bases of the affected TSs would also be relocated to the TRM. The Index pages would also be updated to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a Significant Increase in the Probability or Consequences of An Accident Previously Evaluated

Missile generation from a Reactor Coolant Pump (RCP) flywheel could damage the Reactor Coolant System, the Containment, or other equipment or systems important to safety. The fracture mechanics analyses conducted to support the change to Inservice Inspection (ISI) requirements in accordance with the proposed Section 6.22, ''Reactor Coolant Pump Flywheel Inspection Program'' shows that a pre-existing crack sized just below the detection level will not grow to the flaw size necessary to create flywheel missiles within the life of the plant. This analysis conservatively assumes minimum material properties, maximum flywheel accident speed, location of the flaw in the highest stress area, and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in a Millstone Unit No. 2 flywheel will not grow to the allowable flaw size under Loss of Coolant Accident (LOCA) conditions over the life of the plant, reducing the ISI requirements for the detection of such cracks over the life of the plant will not significantly increase the probability or consequences of an accident previously evaluated

The proposed Technical Specification changes to relocate the requirements for Technical Specification 3/4.4.10, ''Reactor Coolant System, Structural Integrity'' (with the exception of the RCP inspection requirements) to the TRM will have no adverse effect on plant operation or the availability or operation of any accident mitigation equipment. Therefore, the Reactor Coolant System structural integrity (with the exception of the RCP flywheel which is addressed above) will not adversely impact an accident initiator and can not cause an accident. Therefore these changes will not increase the probability or consequences of an accident previously evaluated.

The Index pages will be updated to reflect the proposed changes. These changes are administrative in nature. These changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. These changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a Significant Reduction in a Margin of Safety

The fracture mechanics analyses conducted to support the change to ISI requirements in accordance with the proposed Section 6.22, ''Reactor Coolant Pump Flywheel Inspection Program'' shows that significant conservatism has been used for calculating the allowable flaw size, critical flaw size, and crack growth rate in the RCP flywheels. These include minimum material properties, maximum flywheel accident speed, location of the flaw in the highest stress area and a number of startup/shutdown cycles eight times greater than expected. Since an existing flaw in a Millstone Unit No. 2 flywheel will not grow to the allowable flaw size under normal operating conditions or to the critical flaw size under LOCA conditions over the life of the plant, reducing ISI requirements for the

detection of such cracks over the life of the plant will not involve a significant reduction in the margin of safety. The proposed changes have no impact on plant equipment operation. Therefore, the proposed changes will not result in a reduction in a margin of safety.

Relocation of Technical Specification 3/4.4.10 (whole specification except the portion specifying surveillance requirement for the RCP flywheel) to the TRM does not imply any reduction in its importance in ensuring that the structural integrity and operational readiness of ASME Code Class 1, 2, and 3 components will be maintained at an acceptable level throughout the life of the plant. The proposed change has no impact on plant equipment operation. Therefore, the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas

Date of amendment request: January 27, 2000, as supplemented by letter dated March 1, 2001.

Description of amendment request: The proposed changes to Arkansas Nuclear One, Unit 1 (ANO–1) and Unit 2 (ANO–2), Technical Specifications (TSs) allow for the qualified condensate storage tank (QCST) to be used for both units as the preferred source of water for emergency feedwater (EFW). Currently, the QCST is aligned to the ANO–1 EFW system while ANO–2 relies on non-safety related tanks and an automatic switchover to the Service Water System as the source of EFW coolant water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's analysis is presented below.

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The condensate storage tanks provide a source of condensate grade water for the EFW System. The tanks, one for ANO–1 and two for ANO–2, are already included in the plant TSs. The proposed change allows for both units to operate while aligned to the QCST, but does not affect the physical design, construction, or operation of the condensate storage tanks. These tanks are not associated with the precursors of any accident. This change does not increase the probability of any accident previously evaluated.

As a source of EFW, the tanks serve an accident mitigation function. The proposed change does not alter this function. In addition to the tanks, the Service Water System is also available as a long-term assured source of EFW. The proposed change allows the use of the QCST as the preferred source of EFW for both units. The combination of available sources of water for EFW assures that both units are able to respond to accidents previously evaluated. Because this function continues to be assured, the proposed changes do not increase the consequences of a previously evaluated accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The condensate storage tanks serve an accident mitigation function as a temporary source of EFW. These tanks have not been identified as a precursor to any accident previously evaluated. The design and operation of these tanks have not changed. While the proposed change does permit the qualified tank to be used by ANO–2, the design has been evaluated and it has been demonstrated that the existing tank is capable of meeting the intended design function of both units.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in a Margin of Safety

The existing sources of water for the ANO–1 EFW system will continue to ensure adequate EFW system performance after the proposed change. The QCST and, if necessary, the Service Water System will ensure that the EFW system performs to maintain margins of safety. The Service Water System is the assured long-term source of cooling water for both units. The safety function of decay heat removal and core cooling continues to be met. There is no reduction in the margin of safety for ANO–1.

The proposed change to the ANO–2 specifications will provide a qualified alternative source of EFW. The required function of the tanks is the same as for ANO–1; that is, to provide a source of water until the unit can successfully transfer to decay heat cooling or until the Service Water System is aligned for long-term cooling. The addition of this QCST to the specification as an alternative to the existing tanks does not decrease the margin of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 2, 2001.

Description of amendment request: The proposed amendment would relocate the requirements for the containment recirculation system from the technical specifications to the Technical Requirements Manual (TRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will Operation of the Facility in Accordance With This Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The containment recirculation fans, along with the containment cooling units and containment spray systems, provide a means of circulating the containment atmosphere to ensure adequate mixing of the containment atmosphere. The containment cooling units and containment spray systems are safety-related systems and required by TS 3.6.2.3 and 3.6.2.1, respectively. Adequate air mixing is assured with the use of these two systems. The containment recirculation fans are not credited in the mitigation of any accidents.

Based on an evaluation of the criteria listed in 10 CFR 50.36(c)(2)(ii), the relocation of the

containment recirculation fans to the TRM is acceptable.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will Operation of the Facility in Accordance With This Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The containment recirculation fans are not accident initiators. The function they fulfill will continue to be maintained by the containment cooling units and containment spray pumps. Because the proposed amendment will not change the design, configuration or method of plant operation, it will not create the possibility of a new or different kind of accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will Operation of the Facility in Accordance With This Proposed Change Involve a Significant Reduction in a Margin of Safety?

Air mixing of the containment atmosphere can be accomplished following a LOCA [loss-of-coolant accident] by the containment recirculation fans, the containment cooling units, or the containment spray systems. Any one of these systems is capable of providing adequate air mixing. The proposed change does not change the design function of the containment recirculation fans. Additionally, the containment recirculation fans are not credited in any accident analysis. Since adequate mixing of the containment atmosphere is credited through the containment cooling units and spray systems, relocation of the containment recirculation fan requirements to the TRM does not result in any impact to the margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 3, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island Nuclear Station] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271), on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated May 3, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 [Three Mile Island Nuclear Station, Unit 2] accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide

effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 8, 2001.

Description of amendment request: The proposed amendment would revise the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, technical specifications (TSs) and the associated TS Bases, to reflect changes to support the activation of the trip outputs of the oscillation power range monitor (OPRM) portion of the power range neutron monitoring (PRNM) system and delete the interim corrective action requirements from the TSs. The OPRM trip function provides protection from exceeding the fuel minimum critical power ratio (MCPR) safety limit in the event of thermal-hydraulic power oscillations. PBAPS is currently operating under interim corrective actions that specify restrictions on plant operations and actions by operators in response to power oscillations. The OPRM system provides an automatic reactor trip which eases the burden on the operators if power oscillations were to occur.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

This modification has no impact on any of the existing PRNM functions. It connects the OPRM trip function to the reactor protection system; connects the associated trip alarm to the annunciator circuitry; updates the TSs to add the OPRM-related functions and to delete Interim Corrective Actions (ICAs) related requirements; and revises affected procedures.

The ICAs include a restricted region on the power-to-flow map where thermal-hydraulic instabilities were known to be more likely. Operation in the restricted region requires more frequent monitoring of the average power range monitors (APRMs) and local power range monitors (LPRMs), which are part of the PRNM system. This restricted region is less than 10 percent of the full power-to-flow map. Plant operation in portions of the former restricted region without the increased monitoring of APRMs and LPRMs previously required by the ICAs may cause a slight increase in the probability of occurrence of an instability. This potential increase in probability is not significant because operation in this region will still result in a low likelihood of core power oscillations. Because of the more reliable detection of an instability event, should it occur, the automatic scram if preset limits are exceeded, and the elimination of dependence on the operator, the consequences of an instability event are not increased with this modification.

Based on the above discussion, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Amendment Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

Enabling the OPRM reactor scram function does not create any new system interactions except for the reactor scram function. The failure modes for the new OPRM circuits would be to initiate a reactor scram unnecessarily, or to fail to initiate a reactor scram when instabilities were present. These failures would not create the possibility of a new or different kind of accident. Since the present system has no automatic reactor scram for instabilities, the operators insert a manual scram if necessary, and the effect of core instabilities has been analyzed. The use of a manual scram is still available with the OPRM scram function enabled. Removing the ICAs from the TSs does not create the possibility of a new or different kind of accident, since the effect of core instabilities has been evaluated.

Based on the above discussion, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety.

The current safety analyses assume that the existing ICA related TS requirements are adequate to prevent exceeding the MCPR safety limit due to an instability event. As a result, there is currently no quantitative or qualitative assessment of an instability event with respect to its impact on MCPR.

The OPRM trip function is being implemented to automate the detection (via direct measurement of neutron flux) and subsequent suppression (via reactor scram) of an instability event prior to exceeding the MCPR safety limit. The OPRM trip provides a trip output of the same type as currently used for the APRMs. Its failure modes and types are identical to those for the present APRM output. Currently, the MCPR safety limit is not impacted by an instability event since the event is mitigated by manual means via the ICAs. In both methods of mitigation (manual and automated), the margin of safety associated with the MCPR safety limit is maintained.

Therefore, based on the fact that the MCPR safety limit will not be exceeded as a result of an instability event following implementation of the OPRM trip function in place of the existing manual ICAs, it is concluded that the proposed amendment does not reduce a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1 (BVPS–1), Shippingport, Pennsylvania

Date of amendment request: March 28, 2001.

Description of amendment request: The requested amendment proposes changes to the BVPS–1 Technical Specifications (TSs) associated with the reductions of the reactor coolant system and secondary coolant system specific activity limits. These TS changes support a revised main steam line break safety analysis with a higher assumed primary-to-secondary leak rate in accordance with the methodology described in Nuclear Regulatory Commission (NRC) Generic Letter (GL) 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes by Outside Diameter Stress Corrosion Cracking.'' TS Bases and other administrative changes are proposed for consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change involves the reduction of the Technical Specification Dose Equivalent Iodine 131 (I–131) activity limits for the reactor coolant system (RCS) and the secondary system which facilitates an increase in the assumed accident-induced primary-to-secondary leak rate in the event of a postulated main steam line break (MSLB) accident. There are no proposed changes to any facility structures, systems, or components. The proposed changes do not affect any initiators of accidents previously evaluated nor does the proposed change introduce any new failure mechanisms that may initiate a previously-evaluated accident. Furthermore, the proposed change would not affect the ability of any accident mitigation system to perform its design-basis function as defined in the Updated Final Safety Analysis Report (UFSAR). The dose consequence analysis for a postulated MSLB accident are being revised as part of this amendment and the resulting calculated dose consequences do not increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change is only associated with the reduction of the RCS and secondary system I–131 activity limits and does not involve changes to any facility structures, systems, or components. There are no proposed changes to the facility or its operation. Since there are no changes being made to any structures, systems, or components, no new failure mechanisms are introduced by the proposed changes that would result in the occurrence of a new or different kind of accident from any accident previously evaluated. The accident analyses contained in the UFSAR continue to remain bounding with regard to the spectrum of possible accidents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the Change Involve a Significant Reduction in a Margin of Safety?

There are no proposed changes to any structure, systems, or components. Changes proposed to the dose consequence analysis for a postulated MSLB accident are included in the amendment request. The reduction in the RCS and secondary system activity limits are being made to offset the effects of an increased accident-induced primary-to-secondary leak rate resulting from a postulated MSLB accident in accordance with GL 95–05. The margins to safety that could be affected are those associated with the resulting calculated doses to the public and facility personnel. However, the dose-decreasing effect of lowering the activity limits offsets the dose-increasing effect of raising the assumed accident-induced primary-to-secondary leak rate. Consequently, the resulting calculated doses do not increase.

Therefore, the proposed change does not involve a significant reduction in a margin to safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard P. Correia (Acting).

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: March 30, 2001.

Description of amendment request: The proposed amendment would involve changes to Technical Specification (TS) 3/4.5.2, Emergency Core Cooling—ECCS Subsystems—$T_{avg} \geq 280°F$.

Technical Specification Limiting Condition for Operation (LCO) 3.5.2 requires two independent Emergency Core Cooling Systems (ECCS) Subsystems to be operable. Surveillance Requirement (SR) 4.5.2.f requires each ECCS subsystem to be demonstrated operable by performing a vacuum leakage rate test of the watertight enclosure for Decay Heat Removal System valves DH–11 and DH–12 that assures the motor operator on valves DH–11 and DH–12 will not be flooded for at least (7) days following a Loss-of-Coolant Accident (LOCA). The test is required to be performed: (1) At least once per 18 months, (2) After each opening of the watertight enclosure, and (3) After any maintenance on or modification to the watertight enclosure which could affect its integrity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed changes. Initial conditions and assumptions remain as previously analyzed for accidents in the Davis-Besse Nuclear Power Station Updated Safety Analysis Report.

The proposed changes would increase the surveillance test interval in Technical Specification 4.5.2.f.1 from 18 to 24 months for the vacuum leakage rate test of the watertight enclosure for Decay Heat Removal System valves DH–11 and DH–12. The surveillance data and maintenance records have been reviewed and support an increase in the surveillance test interval from 18 to 24 months based on the low potential for a significant increase in the failure rate of the watertight enclosure due to an increased surveillance interval, and based on the introduction of no new failure modes. The proposed change to the surveillance interval has been evaluated consistent with the NRC guidance on evaluating and proposing such revisions as provided in Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' dated April 2, 1991. The watertight enclosure and its condition do not contribute to the initiation of any accident.

Therefore, the probability of any accident previously evaluated is not increased.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the integrity of the watertight enclosure sealing mechanisms has been evaluated, and it has been determined that the sealing mechanisms will remain intact for the proposed increased surveillance interval. Therefore, there is assurance that the backup boric acid precipitation control flow path will remain available, so that there will be no impact on the source term, containment isolation or radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not alter the manner in which the watertight enclosure is sealed or tested, and the operability requirements of Decay Heat Removal System valves DH–11 and DH–12 will continue to be adequately addressed by Surveillance Requirement 4.5.2.f.1.

No changes are being proposed to the type of testing currently being performed, only to the length of the surveillance test interval. An increase in the surveillance test interval from 18 to 24 months is justified based on the low potential for a significant increase in the failure rate of the watertight enclosure due to an increased surveillance interval, and based on the introduction of no new failure modes.

No different accident initiators or failure mechanisms are introduced by the proposed change. Thus, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Not involve a significant reduction in a margin of safety.

An increase in the surveillance test interval from 18 to 24 months is justified based on the low potential for a significant increase in the failure rate of the watertight enclosure due to an increased surveillance interval, and based on the introduction of no new failure modes.

Since there are no new or significant changes to the initial conditions contributing to accident severity or consequences, there are no significant reductions in a margin of safety.

On the basis of the above, the Davis-Besse Nuclear Power Station has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 1, 2001.

Description of amendment request: The proposed amendment would add new Technical Specification (TS) Administrative Controls Section 6.17, TS Bases Control Program, and make a related change to the TS Index. The proposed new TS Administrative Control would provide requirements for changing and updating the TS Bases. This proposed new TS is similar to the Specification 5.5.14 of NUREG–1430, ''Standard Technical Specifications—Babcock and Wilcox Plants,'' Revision 1, April 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed changes. The amendment application proposes to add a new Technical Specification (TS) Administrative Controls Section 6.17, ''Technical Specifications (TS) Bases Control Program,'' and to make a related change to the TS Index. The proposed changes do not involve a change to any structure, system, or component or to the assumptions of any accident analyses.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no equipment, accident conditions, or assumptions are affected which could lead to a significant increase in radiological consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new or different accident initiators are introduced by these proposed changes.

3. Not involve a significant reduction in a margin of safety because there are no new or significant changes to the initial conditions contributing to accident severity or consequences. Consequently, there are no significant reductions in a margin of safety.

On the basis of the above, the DBNPS has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 1, 2001.

Description of amendment request: The proposed amendment would involve changes to Technical Specification (TS) 3/4.3.1, Reactor Protection System Instrumentation; 3/4.3.2.1, Safety Features Actuation System Instrumentation; TS 3/4.3.2.2, Steam and Feedwater Rupture Control System Instrumentation; and Bases 3/4.3.1 and 3/4.3.2, Reactor Protection System and Safety System Instrumentation.

The proposed changes would revise TS Table 3.3–3, Safety Features Actuation System (SFAS) Instrumentation, TS Table 3.3–11, Steam and Feedwater Rupture Control System (SFRCS) Instrumentation, and associated Bases to add a provision to allow an eight-hour delay in entering an Action statement when an SFAS or SFRCS instrumentation channel is undergoing Channel Functional Testing. The proposed changes would provide a reasonable time to perform the required surveillance testing and relieve the control room staff of the burden of making multiple Action statement entries and exits in order to complete the testing. Additionally, Surveillance Requirements 4.3.1.1.2, 4.3.2.1.2, and 4.3.2.2.2 would be revised to clarify the term ''total bypass function.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed changes. The amendment application proposes to add a provision to TS Table 3.3–3, Safety Features Actuation System (SFAS) Instrumentation, and TS Table 3.3–11, Steam and Feedwater

Rupture Control System (SFRCS) Instrumentation, to permit certain SFAS and SFRCS instrument channels to [be] placed in an inoperable condition for up to 8 hours during surveillance testing without declaring the channel inoperable and entering the Action statement. This proposed change would reduce burden placed on the control room operators and is essentially administrative in nature. The proposed change to the TS Bases 3/4.3.1 and 3/4.3.2, Reactor Protection System and Safety System instrumentation, is associated with the changes to TS Tables 3.3–3 and 3.3–11. These changes will not significantly change testing methodology, system unavailability, or system reliability. Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS Updated Safety Analysis Report (USAR).

The proposed changes to Limiting Condition for Operation 3.3.1.1, Surveillance Requirement (SR) 4.3.1.1.2, SR 4.3.2.1.2, and SR 4.3.2.2.2 to clarify the nomenclature of the Reactor Protection System (RPS), SFAS, and SFRCS bypass functions being tested are administrative in nature. These changes will not effect any plant hardware or the performance of any test. Initiating conditions and assumptions remain as previously analyzed for accidents in the DBNPS USAR.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation, or radiological releases are not affected by the proposed changes. Existing system and component redundancy is not affected by the proposed changes. The existing system and component operation is not affected by the proposed changes, and the assumptions used in evaluating the radiological consequences in the DBNPS USAR are not invalidated. Therefore, for each postulated accident the consequences remain bounded by the consequences from the previously evaluated accidents.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because these proposed changes do not involve any physical changes to systems or components, nor do they alter the manner in which the systems or components are operated. No new or different accident initiators or equipment failure modes are introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because, for the proposed changes, there are no new or significant changes to the initial conditions contributing to accident severity or consequences. Accordingly, there are no significant reductions in a margin of safety.

On the basis of the above, the DBNPS has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 1, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 4.0.5, Applicability, TS Bases 4.0.5, and TS Bases 3/4.4.2 and 3/4.4.3, Reactor Coolant System—Safety Valves, Regarding Inservice Testing Requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed changes. The amendment application proposes to revise DBNPS Technical Specification (TS) Surveillance Requirement 4.0.5, Applicability, and its associated Bases and TS Bases 3/4.4.2 and 3/4.4.3, Reactor Coolant System—Safety Valves. The proposed changes would modify the Technical Specifications to conform to the requirements of Section 50.55a(f) of Title 10 of the Code of Federal Regulations regarding the inservice testing of pumps and valves for the third and successive 120-month intervals. The current DBNPS TS reference the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would reference the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code) which is consistent with Section 50.55a(f).

In addition, surveillance interval definitions for ''semi-quarterly,'' ''every 9 months,'' and ''biennially or every 2 years,'' as used in the ASME Code would be added to TS 4.0.5.b to ensure consistent interpretation of the terms. The proposed changes do not affect any plant hardware and do not affect the probability of any equipment malfunction or accident-initiating event.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no equipment, accident conditions, or assumptions are affected which could lead to a significant increase in radiological consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new or different accident initiators are introduced by these proposed changes.

3. Not involve a significant reduction in a margin of safety because there are no changes to the initial conditions contributing to accident severity or consequences. Consequently, there are no significant reductions in a margin of safety.

On the basis of the above, the DBNPS has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: April 17, 2001.

Description of amendment request: The proposed amendments would implement minor changes and corrections to the Technical Specifications (TS) to correct administrative errors (e.g., typographical, amendment tracking number, etc.), or to incorporate changes that have been justified by previously approved license amendments and should have been made as part of those submittals, or to correct logic errors (e.g., TS operating mode breakpoints based on pressurizer pressure and not temperature). Also, the proposed amendments would revise the Units 1 and 2 TS to delete obsolete terminology and provide conforming changes to reflect the recently implemented change to 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

(1) Operation of the Facility in Accordance With the Proposed Amendment Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

These proposed license amendments require no plant hardware or operational modifications. The proposed changes either correct various administrative errors (e.g., typographical errors, amendment tracking number errors), incorporate changes that have been justified by previously approved license amendments and should have been made as part of those submittals, correct logic errors, or are necessary to implement the 10 CFR 50.59 rule change.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the Facility in Accordance with the Proposed Amendment Would Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

No modifications to either plant hardware or operational procedures are required to support these proposed license amendments; hence, no new failure modes are created. The proposed changes either correct various administrative errors (e.g., typographical errors, amendment tracking number errors), incorporate changes that have been justified by previously approved license amendments and should have been made as part of those submittals, correct logic errors, or are necessary to implement the 10 CFR 50.59 rule change.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the Facility in Accordance With the Proposed Amendment Would Not Involve a Significant Reduction in a Margin of Safety

The majority of TS corrections proposed by these license amendments are administrative in nature in that they either correct typographical errors (e.g., ODCM verses OCDM), are justified by previous license amendments (e.g., surveillance requirements for T_{hot} wide versus narrow range instrumentation), or correct logic errors (e.g., ECCS subsystem TS headings based on operating mode, with Mode 3 breakpoints based on pressurizer pressure and not temperature). The overly restrictive emergency power requirements for non critical single train quality related radiation monitors are being removed, while critical radiation monitor emergency power requirements are unaffected by the change.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Patrick M. Madden (Acting).

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: April 18, 2001.

Description of amendment request: The proposed amendment would implement an improved heat flux correlation (designated ABB–NV) previously approved by the NRC for Westinghouse-Combustion Engineering, as documented in the topical reportCENPD–387–P–A, Rev 000. The proposed change updates Technical Specification (TS) 6.9.1.11, ''Core Operating Limits Report (COLR),'' to include the topical report in the list of analytical methods used. Additionally, the Bases for TS 2.1.1, ''Reactor Core,'' would be modified to reflect use of the improved heat flux correlation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the Facility in Accordance With the Proposed Amendment Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed amendment would allow the implementation of ABB–NV critical heat flux correlation to St. Lucie Unit 2 core. The proposed changes have no adverse impact on the operation of the plant and have no relevance to the accident initiators. There are no changes to the plant configuration, and thus the frequency of occurrence of previously analyzed accidents is not affected by the proposed changes. With the application of the added methodology (the approved ABB–NV DNB correlation), the safety analysis would continue to remain consistent with the design basis requirements. The proposed changes, including changes to the TS Bases, have no adverse effect on the safety analysis and thus would not involve a significant increase in the consequences of design basis accidents. Changes to the COLR limits will continue to be controlled per Generic Letter 88–16 under the provisions of 10 CFR 50.59 and the requirements of TS 6.9.1.11.c.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Use of the Modified Specification Would Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed amendment updates the list of approved methodology in TS 6.9.1.11 and makes corresponding changes to the TS Bases for TS 2.1.1. These changes would not create the possibility of a new kind of accident since there is no change to plant configuration, systems, or components, which would create new failure modes. The modes of operation of the plant would remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the Modified Specification Would Not Involve a Significant Reduction in a Margin of Safety

The proposed changes have no significant adverse impact on the safety analysis. As such, these changes would continue to provide margin to the acceptance criteria for Specified Acceptable Fuel Design Limits (SAFDL), 10 CFR 50.46(b) requirements, primary and secondary overpressurization, peak containment pressure, potential radioactive releases, and existing limiting conditions for operation. The future use of updated approved methodology will follow all design basis requirements to ensure that a safety margin to the acceptance criteria would continue to remain available at all power levels for operation of St. Lucie Unit 2.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Patrick M. Madden (Acting).

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: March 29, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) in three areas, adopting three NRC-approved Technical Specification Task Force (TSTF) issues. This notice is concerned

with changes covered by one of the three issues, identified as TSTF–51.

The licensee proposed to adopt TSTF–51, reducing the operability requirements for certain engineered safeguard features (ESFs) such as secondary containment, standby gas treatment, control room envelop filtration. The current requirements specify that these ESFs be operable during movement of irradiated fuel in the secondary containment, and during core operation. The proposed changes would specify these ESFs be operable during movement of recently irradiated fuel in the secondary containment, and would eliminate the applicability during core alteration. The associated licensee-controlled TS Basis document would also be changed to reflect the changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. TSTF–51 involves no hardware design change, thus there will be no adverse effect on the functional performance of the ESFs to mitigate accident consequences. The ESFs are not initiators of any previously analyzed accidents, thus the proposed changes cannot increase the probability of any previously analyzed accidents. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. TSTF–51 involves no hardware design change or procedural change; hence all components, systems, and structures will continue to perform as originally designed by the licensee and previously accepted by the NRC staff. Therefore, the proposed changes covered by TSTF–51 will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since TSTF–51 involves no change to the design, operational procedure, or analysis methodology, TSTF–51 will not affect in any way the performance characteristics and original intended functions of any system, structure or component. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the part of the amendment request identified as TSTF–51 involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard P. Correia, Acting.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: March 29, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) in three areas, adopting three NRC-approved Technical Specification Task Force (TSTF) issues. This notice is concerned with one of the three changes, identified as TSTF–204.

The licensee proposed to adopt TSTF–204, revising Limiting Condition for Operation (LCO) 3.8.5. Currently, LCO 3.8.5 requires that direct current (DC) power subsystems shall be OPERABLE to support the electrical power distribution subsystems required by LCO 3.8.9 (pertaining to shutdown conditions). Adoption of TSTF–204 would change this to require either the Division 1 or Division 2 DC electrical power subsystems, in addition to the Division 3 DC electrical power subsystem, shall be OPERABLE. This change would restore the TS to what it was before the TS was converted to the Improved TS format by Amendment No. 91 (February 15, 2000). The associated licensee-controlled TS Basis document would also be changed to reflect the changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to adopt TSTF–204 involve no hardware design change or operational procedure change, thus there will be no adverse effect on the functional performance of any plant SSC; the decreased operability requirement pertains to times when there is less demand on the electrical subsystems (i.e., during shutdown conditions). All structures, systems and components (SSCs) will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. Accordingly, the proposed operability requirements will lead to no significant increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. TSTF–204 involves no hardware design change or procedural change; hence all SSCs will continue to perform as originally designed by the licensee and previously accepted by the NRC staff. Therefore, the proposed changes covered by TSTF–204 will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since TSTF–204 involves no change to the design, operational procedure, or analysis methodology, TSTF–204 will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the part of the amendment request identified as TSTF–204 involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard Correia, Acting.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: March 29, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) in three areas, adopting three NRC-approved Technical Specification Task Force (TSTF) issues. This notice is concerned with one of the three changes, identified as TSTF–287.

The licensee proposed to adopt TSTF–287, adding to Section 3.7.2, Control Room Envelope Filtration System (CREFS), a note to permit the control room envelope be opened intermittently under administrative control, and a new Condition B allowing 24 hours to restore operability of the two CREFS subsystems if their operability is lost due to inoperable control room envelope boundary. These proposed provisions would allow time to diagnose, plan and possibly repair, and test most problems with the control room envelope boundary. The associated licensee-controlled TS Basis document would also be changed to reflect the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to adopt TSTF–287 involves no hardware design change or operational procedure change, thus there will be no adverse effect on the functional performance of any plant structures, systems or components (SSCs). The allowance to open the control room envelope intermittently does not increase accident consequences on control personnel since the administrative controls would rapidly restore integrity. Allowing 24 hours to restore the integrity of the control room envelope could result in an increase in consequences of a design-basis accident occurring during this time to control room personnel, but the administrative controls in place would easily and quickly reverse the condition, re-establishing control room envelope integrity, and thus limiting increases in consequences. Thus, all SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. Accordingly, the proposed operability requirements will lead to no significant increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. TSTF–287 involves no hardware design change or procedural change; hence it does not negatively affect the design or performance of any SSC, and all SSCs will continue to perform as originally designed by the licensee and previously accepted by the NRC staff. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since TSTF–287 involves no change to the design, operational procedure, or analysis methodology, TSTF–287 will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the part of the amendment request identified as TSTF–287 involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard Correia, Acting.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: May 2, 2001.

Description of amendment request: The proposed amendment would (1) relocate requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (the Code), Section XI, inservice testing (IST) program currently contained in technical specification surveillance requirement (TSSR) 4.15.B to the TS Administrative Control Section 6.8, Programs and Manuals, (2) make conforming changes to several surveillance requirements to reflect the change in reference from TSSR 4.15.B to the licensee-controlled IST Program, (3) reword TSSRs 4.5.A.3 and 4.5.D.1 to be consistent with NUREG–1433, (4) incorporate TS Task Force (TSTF) initiative TSTF–279 into TS Administrative Control Section 6.8, and (5) revise TSSRs 4.6.H.1, 4.6.H.3, and Table 4.6.1 to change the inspection and functional testing interval extensions reference from plus-or-minus 25 percent to plus 25 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Amendment Will Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The requested changes are administrative in nature in that they relocate IST [inservice testing] requirements from the Monticello TS [Technical Specifications] to a licensee controlled IST program, rewrite TS Surveillance Requirements 4.5.A.3 and 4.5.D.1 for clarification using the wording from NUREG–1433 and revise TS surveillance requirements for inspection and functional testing interval extensions. The requested changes will not revise previous commitments to 10 CFR 50.55a of [sic] ASME [American Society of Mechanical Engineers] Code [ASME Boiler and Pressure Vessel Code], Section XI, IST requirements.

The proposed changes do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do they affect any assumptions or conditions in any of the accident analyses. Since the accident analyses remain bounding, their radiological consequences are not adversely affected.

Therefore, the probability or consequences of an accident previously evaluated are not affected.

2. The Proposed Amendment Will Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Analyzed

The requested changes are administrative in nature in that they relocate IST requirements from the Monticello TS to the licensee controlled IST program, rewrite TS Surveillance Requirements 4.5.A.3 and 4.5.D.1 for clarification using the wording from NUREG–1433 and revise TS surveillance requirements for inspection and functional testing interval extensions. The requested changes will not revise previous commitments to 10 CFR 50.55a or ASME Code, Section XI, IST requirements.

The proposed changes do not involve changes to the configuration or method of

operation of any plant equipment that is used to mitigate the consequences of an accident, nor do they affect any assumptions or conditions in any of the accident analyses. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes.

Therefore, the possibility of a new or different kind of accident from any accident previously analyzed is not created.

3. The Proposed Amendment Will Not Involve a Significant Reduction in the Margin of Safety

The requested changes are administrative in nature in that they relocate IST requirements from the Monticello TS to the licensee controlled IST program, rewrite TS Surveillance Requirements 4.5.A.3 and 4.5.D.1 for clarification using the wording from NUREG–1433 and revise TS surveillance requirements for inspection and functional testing interval extensions. The requested changes will not revise previous commitments to 10 CFR 50.55a or ASME Code, Section XI, IST requirements. Program requirements will remain to ensure that Code requirements are met.

Therefore, a significant reduction in the margin of safety is not involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 11, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to relax the frequency for testing of excess flow check valves (EFCVs). Specifically, TS surveillance requirement 4.6.3.4 would be changed to revise required testing of EFCVs from once per 18 months for all valves to a test of a representative sample each 18 months such that all valves are tested once in 10 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's review is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the surveillance interval for the EFCV's, allowing a reduced number of valves to be tested at each interval. There are no physical plant modifications associated with this change. The EFCV's, which are installed on instrument lines penetrating containment, are designed to close in order to isolate containment upon a failure of the instrument line downstream of the valve. Since the EFCV's are designed to provide an accident mitigation function (i.e., minimize radiological effects due to an instrument line break), their postulated failure to close as a result of the proposed reduced testing frequency is not considered an initiator to any previously evaluated accidents. Therefore, there is no increase in the probability of occurrence of an accident as a result of the proposed changes.

The design basis analyses for an instrument line break is evaluated in Section 15.6.2 of the Hope Creek Updated Final Safety Analysis Report (UFSAR). These analyses do not take credit for the closure of the EFCV's. The postulated failure of an EFCV to close as a result of the proposed reduced testing frequency is bounded by the existing UFSAR analyses. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes in TS surveillance requirements allow a reduced number of EFCV's to be tested each operating cycle. No other changes are being requested. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. These changes will not alter any process variables, structures, systems, or components as described in the safety analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

The radiological consequences of an unisolable break of an instrument line have previously been evaluated in Section 15.6.2 of the Hope Creek UFSAR. The accident analyses assume that the line break results in the release of reactor coolant into the Reactor Building until the reactor pressure vessel is depressurized. The analyses do not take credit for the closure of the EFCV's. The proposed reduced testing frequency only changes the potential for an undetected failure of an EFCV and does not change the event sequence upon which the current safety margin related to radiological consequences is based. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: April 18, 2001.

Description of amendment request: South Carolina Electric & Gas Company (SCE&G) proposes a change to the Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) Surveillance Requirements to revise the volumetric flow units for TS 4.7.6.c.1, c.3, e.1, e.3, and f to identify standard flow units expressed as standard cubic feet per minute. Volumetric flow units for TS 4.6.3.b.1, b.2, c.1, d, and g, and TS 4.9.11.b.1, b.3, d.1, e, and f are being revised to identify actual air flow units and are expressed as actual cubic feet per minute.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

South Carolina Electric & Gas Company (SCE&G) has evaluated the proposed changes to the VCSNS TS described above against the significant Hazards Criteria of 10 CFR 50.92 and has determined that the changes do not involve any significant hazard. The following is provided in support of this conclusion.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated? Changes associated with the identification of proper flow units are editorial and have no impact.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated? Changes associated with the identification of proper flow units are editorial and have no impact.

3. Does this change involve a significant reduction in margin of safety? The margin of

safety for any of the ventilation systems associated with the proposed change is not compromised. Changes associated with the identification of proper flow units are editorial and have no impact.

There are no significant safety hazards created by the change. There is no new or different accident postulated since the change is considered editorial. The design requirements of Regulatory Guide 1.52 remain satisfied. Therefore, there is no significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: May 14, 2001 (TS 01–02).

Brief description of amendments: The proposed amendment would change the Sequoyah (SQN) Unit 1 Operating License Condition 2.C.(9)(d) to clarify the lower voltage threshold for eddy current inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The Proposed Amendment Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not alter plant equipment, system design, or operating practices. The clarification of SQN's Unit 1 [steam generator] SG inspection commitment provides a conservative inspection strategy that defines 1 volt as the lower threshold. The 1-volt threshold is based on the subjectivity uncertainties associated with interpreting bobbin coil probe data to distinguish a dent below 1 volt. Given the current capability of eddy current technology, TVA's proposed change will define a reasonable criteria for tube inspection.

TVA's proposed change continues to ensure that structural and leakage integrity of SQN's Unit 1 SG tubes is maintained. Accordingly, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the SQN Final Safety Analysis Report.

B. The Proposed Amendment Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

SQN limits SG tube leakage between the primary coolant system and the secondary coolant system to 150 gallons per day per SG. This leakage limit ensures that tube cracks have an adequate margin of safety to withstand the loads imposed during normal operation and by postulated accidents. In addition, inservice inspections are performed in accordance with Regulatory Guide 1.83, Revision 1, ''Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes,'' to ensure that structural integrity of SG tubes is maintained during the plant operation cycle.

The proposed change does not modify plant equipment, system design, or operating practices. The clarification of SQN's Unit 1 SG inspection commitment provides an inspection strategy that defines a minimum ''calling'' threshold for dent inspection. The 1-volt threshold is an inspection strategy based on the subjectivity associated with interpreting bobbin coil probe data below 1 volt for dented intersections. TVA's proposed change will continue to provide conservative inspection criteria that maintains structural and leakage integrity of SQN's Unit 1 SG tubes.

Based on the above, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The Proposed Amendment Does Not Involve a Significant Reduction in a Margin of Safety

TVA's proposed clarification of the 1-volt threshold will continue to provide a conservative inspection criteria that will ensure that SG tube structural and leakage integrity is maintained. Accordingly, the margin of safety is not reduced.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Patrick M. Madden (Acting).

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 25, 2001.

Brief description of amendments: The proposed changes would revise Technical Specification (TS) 3.8.1, ''AC [alternating current] Sources—Operating,'' to extend the allowable Completion Times for the Required Actions associated with restoration of an inoperable Emergency Diesel Generator (EDG) and an inoperable offsite circuit (i.e., startup transformer). In addition, the TS Surveillance Requirement (SR) corresponding to the 24-hour EDG endurance run in SR 3.8.1.14 would be revised to allow the SR to be performed during Modes 1 and 2. The proposed changes would also revise TS 3.8.9, ''Distribution Systems—Operating,'' to extend the allowable Completion Times for the Required Actions associated with restoration of an inoperable AC electrical power distribution subsystem (i.e., 6.9 kilovolt (kV) AC safety bus).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the Proposed Changes Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed Technical Specification changes do not significantly increase the probability of occurrence of a previously evaluated accident because the 6.9 kV AC components (i.e., Emergency Diesel Generators (EDGs), startup transformers (STs), and safety-related (Class 1E) busses) are not initiators of previously evaluated accidents involving a loss of offsite power. The proposed changes to the Technical Specification Action Completion Times do not affect any of the assumptions used in the deterministic or the Probabilistic Safety Assessment (PSA) analysis.

The proposed Technical Specification changes will continue to ensure the 6.9 kV AC components perform their function when called upon. Extending the Technical Specification Completion Times to 14 days and allowing the performance of the EDG 24-hour run test in either MODES 1 or 2 does not affect the design of the EDGs, the operational characteristics of the EDGs, the interfaces between the EDGs and other plant systems, the function, or the reliability of the EDGs. Thus, the EDGs will be capable of performing either accident mitigation function and there is no impact to the radiological consequences of any accident analysis.

To fully evaluate the effect of the changes to the 6.9 kV AC components, Probabilistic Safety Analysis (PSA) methods and deterministic analysis were utilized. The results of this analysis show no significant increase in the Core Damage Frequency.

The Configuration Risk Management Program (CRMP) in Technical Specification 5.5.18 is an administrative program that assesses risk based on plant status. Adding the requirement to implement the CRMP for Technical Specification 3.8.1 and 3.8.9 requires the consideration of other measures to mitigate consequences of an accident occurring while a 6.9 kV AC component is inoperable.

The proposed changes do not alter the operation of any plant equipment assumed to function in response to an analyzed event or otherwise increase its failure probability. Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Do the Proposed Changes Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

Response: No.

These proposed changes do not change the design, configuration, or method of operation of the plant. The proposed activities involves [sic] a change to the allowed plant mode for the performance of specific Technical Specification surveillance requirements. No physical or operational change to the 6.9 kV AC components or supporting systems are made by this activity. Since the proposed changes do not involve a change to the plant design or operation, no new system interactions are created by this change. The proposed Technical Specification changes do not produce any parameters or conditions that could contribute to the initiation of accidents different from those already evaluated in the Final Safety Analysis Report.

The proposed changes only address the time allowed to restore the operability of the 6.9 kV AC components. Thus the proposed Technical Specification changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the Proposed Changes Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed changes do not affect the Limiting Conditions for Operation or their Bases that are used in the deterministic analysis to establish any margin of safety. PSA evaluations were used to evaluate these changes, and these evaluations determined that the net changes are either risk neutral or risk beneficial. The proposed activities involves [sic] changes to certain Completion Times and to the allowed plant mode for the performance of specific Technical Specification Requirements. The proposed changes remain bounded by the existing Surveillance Requirement Completion Times and therefore have no impact to the margins of safety.

The proposed change does [sic] not involve a change to the plant design or operation and thus does not affect the design of the 6.9 kV AC components, the operation characteristics of the 6.9 kV AC components, the interfaces between the 6.9 kV AC components and other plant systems, or the function or reliability of the 6.9 kV AC components. Because 6.9 kV AC components performance and reliability will continue to be ensured by the proposed Technical Specification changes, the proposed changes do not result in a reduction in the margin of safety.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: April 23, 2001.

Description of amendment request: The amendment would update the facility operating license (FOL) by deleting obsolete information, correcting errors, and making administrative changes to enhance the context and provide consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The Operation of Vermont Yankee Nuclear Power Station in Accordance With the Proposed Amendment Will Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change makes editorial changes and brings the FOL up to date with the expectations of Massachusetts regulatory agencies. Since reactor operation under the proposed amendment is unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events or assumed mitigation of accident or transient events. The structural and functional integrity of plant systems is unaffected. Thus, there is no significant increase in the probability or consequences of accidents previously evaluated.

2. The Operation of Vermont Yankee Nuclear Power Station in Accordance With the Proposed Amendment Will Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not affect any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created. No safety-related equipment or safety functions are altered as a result of these changes. Because it does not involve any change to the plant or the manner in which it is operated, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Operation of Vermont Yankee Nuclear Power Station in Accordance With the Proposed Amendment Will Not Involve a Significant Reduction in a Margin of Safety

The proposed change does not affect design margins or assumptions used in accident analyses, and has no effect on any assumed analysis initial condition. The capability of safety systems to function and limiting safety system settings are similarly unaffected as a result of this change. Thus, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3)

the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Public Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: December 20, 2000, as supplemented March 14, 2001.

The March 14, 2001, letter provided additional clarifying information which did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the original notice. A March 23, 2001, letter provided a camera-ready copy of the revised technical specification pages.

Brief description of amendment: The amendment allows the expanded use of the Framatome Cogema Fuels M5 alloy for fuel rod cladding and fuel assembly spacer grids. A related Bases change is included with the licensee's application.

Date of issuance: May 10, 2001.

Effective date: As of the date of issuance and shall be implemented no later than the startup of Cycle 14 operation, approximately October 1, 2001.

Amendment No.: 233.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.*Date of initial notice in* ***Federal Register:*** February 6, 2001 (66 FR 9379).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 2001.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 13, 2000.

Brief description of amendments: The amendment revised the technical specifications to delete the ''Power Range Neutron Flux High Negative Rate,'' Trip Function from Reactor Trip System Instrumentation. The changes allow elimination of this unnecessary function and thereby reduces the potential for a transient. The changes are consistent with the Westinghouse Topical report previously accepted by the NRC.

Date of issuance: May 17, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 114, 114, 120, 120.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 21, 2001 (66 FR 11054).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2001.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: November 21, 2000, as supplemented April 25, April 26, May 3 (two letters), and May 8, 2001.

Brief description of amendment: Amendment conforms the license to reflect the transfer of operating authority under Operating License No. DPR–20 to Nuclear Management Company, LLC, as approved by order of the Commission dated April 19, 2001 (66 FR 21021 dated April 26, 2001).

Date of issuance: May 15, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 201.

Facility Operating License No. DPR–20. Amendment revised the Operating License.

Date of initial notice in ***Federal Register:*** December 19, 2000 (65 FR 79431).

The supplemental letters dated April 25, April 26, May 3 (two letters), and May 8, 2001, were within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2001.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 7, 2000.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) in accordance with changes to the ''Standard Technical Specifications, Combustion Engineering Plants,'' NUREG 1432, Revision 1, made by the Nuclear Energy Institute Technical Specifications Task Force Change Number 258, Revision 4, addressing changes to various administrative controls in the TSs.

Date of issuance: May 3, 2001.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 196.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2001 (66 FR 7678).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2001.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 7, 2000.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) in accordance with changes to the ''Standard Technical Specifications, Combustion Engineering Plants,'' NUREG 1432, Revision 1, made by the Nuclear Energy Institute Technical Specifications Task Force Change Number 287, Revision 5, addressing allowances for breach of the control room envelope. Also, the action table for TS Limiting Condition for Operation 3.7.10 is corrected by restoring Required Action D.2 (now renumbered to E.2), which was inadvertently omitted in Amendment No. 189, issued on November 30, 1999.

Date of issuance: May 3, 2001.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 197.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2001 (66 FR 7678).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2001.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 7, 2000.

Brief description of amendment: The amendment changes Technical Specification (TS) 3.5.2 in accordance with changes to the ''Standard Technical Specifications, Combustion Engineering Plants,'' NUREG 1432, Revision 1, made by the Nuclear Energy Institute Technical Specifications Task Force change number 325, Revision 0, addressing changes to the structure of the TS Limiting Condition for Operation (LCO) for the Emergency Core Cooling System.

Date of issuance: May 3, 2001.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 198.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 24, 2001 (66 FR 7675).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2001.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: April 6, 2001, as supplemented by letter dated May 3, 2001.

Brief description of amendment: The amendment revises the surveillance requirements pertaining to testing of the emergency diesel generators. The change removes the restrictions in plant technical specifications that prohibit performing the required testing during plant operation (Modes 1, 2, and 3). Additionally, the amendment modifies plant technical specifications to allow the endurance test to be performed in lieu of the load-run test provided the requirements of the load-run test, except the upper limit, are met.

Date of issuance: May 18, 2001.

Effective date: May 18, 2001, to be implemented within 30 days of the date of issuance.

Amendment No.: 173.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 17, 2001 (66 FR 19801).

The May 3, 2001, supplemental letter provided clarifying information, did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 5, 2001, as supplemented on April 13, 2001.

Brief description of amendment: This amendment changes the Safety Limit Minimum Critical Power Ratio in Technical Specification (TS) 2.1.2 from 1.08 to 1.06. The amendment makes administrative changes to TS 5.6.5, ''Core Operating Limits Report,'' section a and b. The amendment makes administrative changes to Bases section 2.1 to reflect this TS change and to Bases section 3.11 to reflect an earlier TS change.

Date of issuance: May 8, 2001.

Effective date: As of the date of issuance, and shall be implemented prior to startup from Refueling Outage 13.

Amendment No.: 191.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2001 (66 FR 13802).

The April 13, 2001, letter provided clarfying information that was within the scope of the amendment request and did not change the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: November 9, 2000.

Brief description of amendment: This amendment revised the technical specifications by approving thirteen of the simpler, generic administrative/editorial/consistency improvements agreed upon between the Nuclear Energy Institute (NEI) Technical Specification Task Force (TSTF) and the Nuclear Regulatory Commission (NRC), subsequent to the conversion of the PNPP Technical Specifications to the improved Standard Technical Specifications. The improvements include TSTF–5, TSTF–32, TSTF–38, TSTF–52, TSTF–65, TSTF–104, TSTF–106, TSTF–118, TSTF–152, TSTF–166, TSTF–258, TSTF–278, and TSTF–279.

Date of issuance: May 15, 2001

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 120

Facility Operating License No.NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 13, 2000 (65 FR 77920).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: March 12, 2001.

Brief description of amendments: The amendments reduced the requirement for average reactor coolant temperature during the rod cluster control assembly drop test from greater than or equal to 541°F to greater than or equal to 500°F.

Date of issuance: May 7, 2001.

Effective date: May 7, 2001.

Amendment Nos: 214 and 208.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 4, 2001 (66 FR 17967).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 7, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: June 9, 2000.

Brief description of amendment: The amendment revised the Technical Specifications (TS) 3.7.7 for the Main Turbine Bypass Valve surveillance test frequency, TS surveillance requirement SR 3.7.7.1 frequency from 31 days to 92 days.

Date of issuance: May 16, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 239.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 26, 2000 (65 FR 46009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: November 20, 2000, as supplemented February 6 and May 3, 2001.

Brief description of amendments: These amendments incorporate changes to the Technical Specifications to increase the allowable deviation in individual rod position indication. By the February 6, 2001, supplemental letter, the licensee withdrew portions of the original application that dealt with operation at greater than 85-percent power. The licensee plans to submit those portions that deal with operation at greater than 85-percent power as a separate amendment request at a later time.

Date of issuance: May 8, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 200 and 205.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 7, 2001 (66 FR 9386).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 2001.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 8, 2000, as supplemented by letter dated January 4, 2001.

Brief description of amendments: The amendments revised Technical Specification (TS) Section 3.5.5, ''Emergency Core Cooling Systems—Seal Injection Flow,'' to replace the description of the seal injection flow with a description consistent with the method used to establish and verify reactor coolant pump seal injection flow limits and the method used to calculate the seal injection flow in the safety analyses for the Diablo Canyon Nuclear Power Plant.

Date of issuance: May 7, 2001.

Effective date: May 7, 2001, and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—148; Unit 2—148.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 4, 2001 (66 FR 17968).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 7, 2001.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: August 28, 2000.

Brief description of amendments: The amendments revised the Technical Specifications (TS) Section 5.5.2.b, ''Primary Coolant Sources Outside Containment'' by changing the system leak test frequency from ''at refueling cycle intervals or less'' to ''at least once every 18 months.'' The proposed change will also allow the provisions of Surveillance Requirement (SR) 3.0.2 to apply to TS Section 5.5.2.b.

Date of issuance: May 11, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 119 and 97.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 20, 2000 (65 FR 56955).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 2001.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 5, 2000.

Brief description of amendments: The amendments revise the licenses to reflect changes to the Updated Final Safety Analysis Report due to revisions to the dose equivalent iodine analysis.

Date of issuance: May 11, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 120 and 98.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the license.

Date of initial notice in ***Federal Register:*** December 13, 2000 (65 FR 77925).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 11, 2001.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 6, 2000, as supplemented by letter dated February 9, 2001.

Brief description of amendments: The amendments revised Technical Specifications (TS) 3.7.10, ''Control Room Emergency Filtration System (CREFS)—Both Units Operating,'' TS 3.7.11, ''Control Room Emergency Filtration System (CREFS)—One Unit Operating,'' and TS 3.7.13, ''Piping Penetration Area Filtration and Exhaust System (PPAFES),'' to establish actions to be taken for inoperable ventilation systems due to a degraded control room pressure boundary or piping penetration area pressure boundary, respectively. Specifically, the changes allow the pressure boundaries of ventilation systems such as CREFS and PPAEFS to be opened intermittently under administrative control. A new condition is also added that allows 24 hours to restore inoperable CREFS and PPAFES pressure boundaries before requiring the units to perform an orderly shutdown. The applicable TS Bases have been revised to document these TS changes and to provide supporting information. These changes are based on Technical Specifications Task Force (TSTF) –287, Revision 5, to the Standard Technical Specifications.

Date of issuance: May 14, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 121 and 99.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 13, 2000 (65 FR 77926).

The supplemental letter dated February 9, 2001, provided clarifying information that did not change the scope of the November 6, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 2001.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: March 9, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) by allowing insertion of up to four lead test assemblies containing downblended uranium, in accordance with Framatome Cogema Fuels Topical Report BAW 2328, into the Sequoyah Unit 1 core for up to two fuel cycles.

Date of issuance: May 9, 2001.

Effective date: May 9, 2001.

Amendment No.: 268.

Facility Operating License No. DPR–77: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** April 4, 2001 (66 FR 17970).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2001.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: December 7, 2000.

Brief Description of amendments: These amendments revise the Technical Specifications (TS) in Section 3.23 for the Main Control Room and Emergency Switchgear Room Ventilation and Air Conditioning Systems; TS Surveillance Requirement (SR) Section 4.20 for the Control Room Air Filtration System; and TS SR Section 4.12 for the Auxiliary Ventilation Exhaust Filter Trains. The proposed changes will revise the above SRs for the laboratory testing of the carbon samples for methyl iodide removal efficiency to be consistent with American Society for Testing and Materials Standard D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' with qualification, as the laboratory testing standard for both new and used charcoal adsorbent used in the ventilation system.

Date of issuance: May 14, 2001.

Effective date: May 14, 2001.

Amendment Nos.: 225 and 225.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 21, 2001, (66 FR 15931), supersedes March 20, 2000 (65 FR 15388).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 2001.

No significant hazards consideration comments received: No.

Yankee Atomic Electric Co., Docket No. 50–29, Yankee Nuclear Power Station (YNPS) Franklin County, Massachusetts

Date of application for amendment: November 22, 2000.

Brief description of amendment: The amendment relocated certain administrative requirements from the Yankee Nuclear Power Station (YNPS) Defueled Technical Specifications to the YNPS Decommissioning Quality Assurance Program. Additional editorial changes to titles and designations were also made.

Date of issuance: May 15, 2001.

Effective date: May 15, 2001.

Amendment No.: 155.

Facility Operating License No. DPR–3. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 4, 2001 (66 FR 17972).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 2001.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland this 22nd day of May 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–13400 Filed 5–29–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12514]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Keystone Property Trust, Common Stock, Par Value $.01 Per Share)

May 23, 2001.

Keystone Property Trust, a Maryland real estate investment trust (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) hereunder,[2] to withdraw its Common Stock, par value $.01 per share (''Security''), from listing and registration on the American Stock Exchange (''Amex'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Maryland, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Amex has in turn informed the Issuer that its does not object to the proposed withdrawal of the Issuer's Security from listing and registration on the Exchange.

The Board of Trustees (''Board'') approved a resolution on April 17, 2001 to withdraw the Issuer's Security from listing on the Amex and to list such Security on the New York Stock Exchange, effective May 9, 2001. The Issuer stated that the Board took such action in order to increase the profile and visibility of the Issuer in the public markets and to attract more interest in the Issuer from individuals and institutional investors.

The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the NYSE under section 12(b) of the Act.[3]

Any interested person may, on or before June 13, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13527 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–15237]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (OTR Express, Inc., Common Stock, $.01 Par Value)

May 23, 2001.

OTR Express, Inc., a Kansas corporation (''Issuer''), has filed an

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange (''Amex'').

The Issuer has stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the State of Kansas, in which it is incorporated, and with the rules the Amex governing an issuer's voluntary withdrawal of a security from listing and registration. The Amex has in turn informed the Issuer that it does not object to the proposed withdrawal of the Issuer's Security from listing and registration on the Exchange.

The Board of Directors of the Issuer approved a resolution on May 9, 2001 to seek withdrawal of the Issuer's Security from listing on the Amex. In making the decision to withdraw the Security from listing on the Exchange, the Issuer considered its non-compliance with the Amex maintenance standards concerning the aggregate market value of shares publicly held and the Security's low selling price. The Issuer represents that it expects to file a Form 15 with the Commission to formally suspend its duties to file reports under section 13[3] and 15(d)[4] of the Act.

Any interested person may, on or before June 13, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–13528 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78m.

[4] 15 U.S.C. 78*o*(d).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44336]

Order Extending the Deadlines for the Exchanges and the National Association of Securities Dealers, Inc. To Submit Studies and Rule Filings Concerning the Implementation of Decimal Pricing in Equity Securities and Options Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

May 22, 2001.

Notice is hereby given that, pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] the Securities and Exchange Commission (''Commission'') modifies its June 8, 2000 Order[2] to the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the International Securities Exchange, LLC, the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively the ''Participants'' and individually a ''Participant'') to extend the deadlines set forth in the June 8, 2000 Order that require the Participants to submit studies concerning the implementation of decimal pricing in equity securities and options by June 8, 2001, and rule filings to establish the minimum price variation (''MPV'') in each market for quoting equity securities and options by July 9, 2001.

The Commission's June 8, 2000 Order establish the framework for the Participants to convert their quotation prices in equity securities and options from fractions to decimals. Pursuant to the Order, the Participants submitted an implementation plan and successfully completed the phasing-in of decimal pricing in all equity securities and options on April 9, 2001.

The June 8, 2000 Order also established two other requirements. First, the Order required the Participants to submit to the Commission by June 8, 2001 studies that would analyze how the decimal conversion had affected systems capacity, liquidity, and trading behavior. These studies would offer insights into proper MVPs that should be maintained for pricing equity securities and options, as well as any changes to self-regulatory rules necessary to maintain fair and orderly markets. Second, the Order required the Participants to submit by July 9, 2001 rule filings that would individually establish an MPV for each market.

In view of the complexities of more of the issues that have been raised concerning decimal pricing,[3] the Commission believes that it is necessary and appropriate to extend the original deadlines set forth in the June 8, 2000 Order for the Participants to submit their studies and rule filings. The Commission believes that such an extension is necessary to give the Participants adequate time to thoroughly analyze all of the vital investor protection and market integrity issues that need to be addressed in order to preserve the benefits of decimalization.

It Is Hereby Ordered, pursuant to section 11A(a)(3)(B) of the Exchange Act,[4] that the Participants shall submit their studies to the Commission no later than September 10, 2001, and that the Participants shall submit their rule filings pursuant to Section 19(b)(2) of the Exchange Act no later than November 5, 2001. All other aspects of the Commission's June 8, 2000 Order remain in effect until otherwise ordered by the Commission.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13473 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the establishment of a national market system, by rule or order, ''to authority or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof.'' 15 U.S.C. 78k–1(a)(3)(B).

[2] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[3] The difficulties inherent in conducting useful analyses of the effects of decimalization in such a short time frame were also discussed in a letter from the Amex requesting an extension of the June 8, 2001 deadline for decimalization studies. *See* letter to Annette Nazareth, Director, Division of Market Regulation, from Peter Quick, Amex President, dated My 9, 2001. The Commission believes that the study deadline should be extended not only from the Amex, but also for the other securities exchanges and the NASD.

[4] 15 U.S.C. 78K–1(a)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44256A; File No. SR–Amex–2001–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the American Stock Exchange LLC Relating to Independent Director and Audit Committee Requirements

May 23, 2001.

Correction

In FR Document 01–11801 beginning on page 23955 for Thursday, May 10, 2001, the date for File No. SR–2001–24 should read May 4, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13474 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44337; File No. SR–Amex–2001–15]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Its Annual Electronic Access Fee

May 22, 2001.

On March 9, 2001, the American Stock Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the proposed rule change to (i) amend Article VII of the Exchange Constitution by deleting the requirement that the annual electronic access fee be fixed by the Board of Governors based on a given formula; and (ii) set the year 2001 electronic access fee at $61,363.00.

The proposed rule change was published for comment in the **Federal Register** on April 16, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act[6] because it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed ruled change (File No. SR–Amex–2001–15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13531 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44166 (April 6, 2001), 66 FR 19591.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44335; File No. SR–CBOE–2001–26]

Self-Regulatory Organizations; Notice Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to a Four Month Extension of the Pilot Program To Eliminate Position and Exercise Limits for FLEX Equity Options

May 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The proposed rule change has been filed by the CBOE as a ''non-controversial'' rule change under Rule 19–4(f)(6).[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a four month extension of the pilot program that provides for the elimination of position and exercise limits for S&P 100 Index (''OEX''), S&P 500 Index (''SPX''), and Dow Jones Industrial Average (''DJX'') index options as well as for FLEX options overlying these indexes. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 22, 1999, the Commission approved a two-year pilot program (''Pilot Program'') that allowed for the elimination of position and exercise limits for options on the SPX, OEX, and DJX as well as for FLEX options overlying these indexes.[4] By order dated January 30, 2001, the Commission extended the Pilot Program until May 22, 2001.[5] The purpose of this proposed rule change is to request a four-month extension of the Pilot Program until September 22, 2001 to allow the Commission additional time to consider the Exchange's separate application for permanent approval of the Pilot Program.[6]

The Approval Order required the Exchange to submit a report to the Commission on the status of the Pilot Program so that the Commission could use this information to evaluate any consequences of the program and to

[4] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 49111 (February 1, 1999) (approving SR–CBOE–99–23). (''Approval Order'')

[5] *See* Securities Exchange Act Release No. 43867 (January 22, 2001), 66 FR 8250 (January 30, 2001) (approving SR–CBOE–01–01).

[6] By separate filing (SR–CBOE–2001–22), CBOE requests permanent approval of the Pilot Program.

determine whether to approve the elimination of position and exercise limits for these products on a permanent basis.[7] The CBOE submitted the required report to the Commission on December 21, 2000.[8] The report indicates that during the review period, CBOE did not discover any instances where an account maintained an unusually large unhedged position. The data from the report found that only 12 accounts established positions in excess of 10% of the standard limit applicable to each index at the time the Pilot Program was approved. These positions were all in SPX and most were established by firms and market makers. All of the accounts were hedged, although to different degrees. Most important, CBOE's analysis did not discover any aberrations caused by large unhedged positions during the life of the Pilot Program. For this reason, the Exchange believes that its experience with the Pilot Program has been positive. Accordingly, CBOE requests that the effectiveness of the Pilot Program be extended four months.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[9] of the Act in general and in particular with Section 6(b)(5)[10] in particular in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by allowing for the extension of a Pilot Program that has enabled more business to be transacted on the exchanges that might otherwise have been transacted in the over the counter (''OTC'') market without the benefit of Exchange transparency and the guarantee of The Options Clearing Corporation. The Exchange also believes that the proposed rule change is consistent with section 11A of the Act[11] in that it will enhance competition by allowing the Exchange to compete better with the OTC market in options and with entities not subject to position limit rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder[13] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of the filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative on May 22, 2001, because such action will allow the Exchange to continue the Pilot Program without interruption while the Commission determines whether to approve the Pilot Program on a permanent basis. The Commission finds that accelerating the operative date of the rule change to prevent interruption of the Pilot Program while the Commission considers the permanent approval request is consistent with the protection of investors and the public interest, and thus designates May 22, 2001 as the operative date of the filing.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2001–26 and should be submitted by June 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13530 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

[7] In the Approval Order, the Commission stated: ''CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program. The Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.''

[8] Letter from Patricia L. Cerny, Director, Office of Trading Practices, CBOE, to Elizabeth King, Division of Market Regulation, SEC, dated December 21, 2000.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1.

[12] 15 U.S.C. 78f(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] The Commission has determined to waive the requirement the CBOE provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[15] The Commission requests that the CBOE update the Commission on any problems that have developed with the pilot since the last extension, including any compliance issues, and whether there have been any large unhedged positions that have raised concerns for the CBOE. In addition, the Commission reiterates the expectation that the CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop. *See* note 7, *supra.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44339; File No. SR–CBOE–2001–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Proposed Order ''PACER''

May 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2001, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 20, 2001, the CBOE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to add a new parameter, the order PACER, to its Order Routing System (''ORS''). PACER will enable the CBOE to modulate the frequency of executions through the Exchange's Retail Automatic Execution System (''RAES''). Below is the text of the proposed rule change, as amended by Amendment No. 1. Proposed new language is italicized.

Rule 6.8: RAES Operations

(d)*(vi)*

The appropriate Floor Procedure Committee (''FPC'') may regulate the frequency of executions through RAES. To regulate the frequency, the FPC may institute a ''PACER interval'' applicable to a member firm's RAES orders on the same side of the market within a given class of options. The PACER interval, which shall be activated by an initial RAES execution, shall prohibit subsequent RAES executions by the same member firm on the same side of the market within the same class until a set amount of time (the PACER interval) expires. Upon expiration of the PACER interval, that member firm would again be entitled to receive RAES executions in that class, subject to subsequent PACER restrictions. The appropriate FPC shall determine the length of the PACER interval. RAES-eligible orders received during the PACER interval shall be routed to PAR. The PACER interval shall not be applicable to orders that execute against EBOOK.

When there is a large influx of orders that route from RAES that are rerouted for manual handling such that there are more orders than can be handled expeditiously, the DPM for the class, with input from the trading crowd, shall have the ability to disengage the order PACER for that class. When the influx of orders subsides such that orders may be handled expeditiously, the DPM in the affected class, upon receipt of approval by two Floor Officials, may reactivate PACER in the affected class.

For purposes of this rule, long (short) calls and short (long) puts shall be considered to be on the same side of the market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CBOE Rule 6.8(d) to enable the appropriate Floor Procedure Committee (''FPC'') to limit the frequency with which member firms can receive executions through RAES. Under the proposal, CBOE will add a new parameter, the order PACER, that will enable it to modulate the frequency of executions through RAES. The CBOE represents that the proposal is designed to permit customers to continue to receive the benefits of automatic execution of their small option orders while at the same time allowing market makers to limit their exposure to artificial depth.

When PACER is engaged, individual member firms will be entitled to execute, in a particular class, one RAES order (regardless of series) on the same side of the market every designated number of seconds. The appropriate FPC shall determine and establish the length of time for the PACER interval setting on a class-by-class basis.[4] If the PACER interval is established at five seconds, each individual member firm would be entitled to receive one execution through RAES for all orders in all series within the same class on the same side of the market per five-second interval. For purposes of this proposal, the following orders shall be deemed to be on the same side of the market:

- Long calls and short puts (bullish side of the class)
- Short calls and long puts (bearish side of the class)

For example, if Firm XYZ executes an order through RAES to buy 50 calls for a particular option, it would be ineligible to receive additional RAES executions for either long calls or short puts in any series of that option class until the PACER interval period expired. Firm XYZ orders on the opposite side of the market (*i.e.*, short calls and long puts) would be eligible for execution, subject to the PACER parameters applicable to the opposite side of the market (*i.e.*, one order execution every *x* seconds). Firms XYZ's RAES-eligible orders sent through ORS that are received during the period the PACER interval precludes automatic execution (*i.e.*, before *x* seconds expire) would not be routed to RAES and instead would be sent to PAR where they would be handled in accordance with applicable procedures.

The PACER interval will apply only to RAES orders that would be assigned to market makers via standard RAES allocation methods (*e.g.*, the Wheel or Variable RAES). As such, the PACER interval would not apply to RAES orders executed against EBOOK via ABP or ABP Split-Price.[5] As an example, if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE described the circumstances in which a Designated Primary Market Maker (''DPM'') may disengage and reactivate PACER. In addition, Amendment No. 1 also made technical corrections to the language of the proposed rule change. *See* letter from Stephen M. Youhn, Attorney, CBOE, to Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, SEC, dated April 19, 2001. Amendment No. 1 is discussed in more detail in Section II.A. below.

[4] While the appropriate FPC shall establish the length of the PACER interval, the Designated Primary Market Maker (''DPM'') for a particular class, with input from the trading crowd, shall have the ability to disengage and reactivate the order PACER for that class under the circumstances set forth in Amendment No. 1. These circumstances are discussed below.

[5] ABP is an acronym for the Exchange's Automated Book Priority system. ABP enables a RAES order to execute against the book when the book represents the best price on the Exchange. *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (SR–CBOE–99–29). Under ABP Split Price, if an incoming RAES order is larger than a booked order that is establishing the Exchange's best price, the RAES order will be executed against the booked order. Formerly, the remainder of that RAES order would be executed in its entirety at the book price against market-makers participating on RAES. Under ABP Split Price, the RAES order is only executed at the booked price up to a pre-set ''Book

Continued

the EBOOK represents the best price for a series along with Autoquote and ORS receives three RAES-eligible orders to buy the same series (submitted by the same member firm), the first order would be executed against the EBOOK (extinguishing the order on the book). The second order would be executed in RAES, activating the PACER interval timer. The third order, because it was received during the period the PACER interval was activated, would not receive automatic execution and instead would be routed to the PAR station.

In Amendment No. 1, the CBOE revised the language of proposed Rule 6.8(d)(vi) to clarify the circumstances in which the DPM for a particular class may disengage and reactivate PACER for that class. The Amendment states that the DPM may disengage PACER for a particular class, with input from the trading crowd, ''[w]hen there is a large influx of orders that route from RAES that are rerouted for manual handling such that there are more orders than can be handled expeditiously * * *.''[6] When the influx of orders subsides such that orders may again be handled expeditiously, the DPM in the affected class may activate PACER for that class upon receipt of approval by two Floor officials. In this connection, the CBOE represents that it will comply in all respects with CBOE Rule 6.8.08.[7] Specifically, the CBOE states that it will document all instances in which PACER is disengaged in a class and subsequently reengaged during the same trading day, the reasons for such action, and the identity of the Floor Officials involved in the decision to reengage PACER.[8]

In addition, in Amendment No. 1 the CBOE represented that it expects that PACER will be activated floor-wide in all classes under normal market conditions. The CBOE stated that, while the Equity FPC (''EFPC'') retains the authority to establish the length of the PACER interval, the EFPC normally meets only once every two weeks. This will preclude it from determining to alter the length of the PACER interval on an intraday basis. The CBOE stated that, as indicated in the original filing, the EFPC has the authority to deactivate PACER for a particular class or to establish the length of the PACER interval on a class-by-class basis. The CBOE represented that it will post on its public website the length of the PACER interval applicable to all affected classes.

2. Statutory Basis

The Exchange believes the proposal represents an efficient mechanism whereby customers can continue to receive the benefits of automatic execution of their small option orders while at the same time allowing market makers to limit their exposure to artificial depth. For these reasons, the Exchange believes the proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements under section 6(b)(5)[9] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Furthermore, the Exchange believes that the proposed rule change is consistent with the Act's requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR–CBOE–2001–16 and should be submitted by June 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13532 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

Price Commitment Quantity'' set by the FPC. Thereafter, if any part of the RAES order is still unfilled, the remainder will be executed at the next prevailing bid or offer, *i.e.*, the book price or the Autoquote price. If the Autoquote system is not in effect, the remainder of the RAES order would be routed to the crowd PAR terminal for manual execution, whether against the book or competing members of the trading crowd. *See* Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001) (SR–CBOE–00–21).

[6] Amendment No. 1, *supra* note 3.

[7] CBOE Rule 6.8.08 states that ''[t]he Exchange will document in its Control Room log, or in any other format provided for by the Exchange, any action taken to disengage RAES or to operate RAES in a manner other than normal, the option classes affected by such action, the time such action was taken, the Exchange officials who undertook such action, and the reasons why such action was taken.''

[8] *See* Amendment No. 1, *supra* note 3.

[9] 15 U.S.C. 78(f)(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44340; File No. SR–ISE–2001–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange LLC Related to a Temporary Extension of Allocation Algorithm Pilot

May 22, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 21, 2001, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by the ISE. The Commission is granting accelerated approval of the proposed rule change and publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Supplementary Material .01 to ISE Rule 713 to temporarily extend, until August 1, 2001, the effectiveness of the Exchange's allocation algorithm pilot, approved by the Commission on May 22, 2000.[3] The Exchange is requesting accelerated approval of the proposed rule change so that the current allocation formula will continue to remain in effect on a pilot basis while the Commission considers the Exchange's request for permanent approval of the allocation formula. The text of the proposed rule change is available at the ISE and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under ISE Rule 713, orders sent to the ISE are executed at the best bid or offer first against public-customer limit orders on the ISE's limit order book and then against market maker quotes and professional orders according to an allocation formula. This allocation formula is specified in Supplementary Material .01 to ISE Rule 713. As discussed above, the portion of the allocation formula that gives the primary market maker (''PMM'') priority over other market makers and professional orders with respect to orders of five contracts or fewer was approved by the Commission on May 22, 2000 on a one-year pilot basis. According to the Exchange, it will be filing shortly a proposed rule change with the Commission requesting permanent approval of the current allocation formula. The Exchange is requesting that the current pilot be extended until August 1, 2001 so that the current allocation formula will remain in effect while the Commission considers its request for permanent approval.[4]

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of section 6(b)(5) of the Act,[5] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2001–16 and should be submitted by June 20, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that granting a temporary extension to the existing pilot program relating to the ISE's existing allocation algorithm, as described in the proposed rule change, is consistent with the requirements of section 6 of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission believes the proposal is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000).

[4] Pursuant to the terms of the pilot, the ISE was required to provide the Commission with confidential statistics regarding executions on a quarterly basis. In addition, the ISE was required to lower the size of the orders for which the PMM receives priority if more than 40% of the total volume executed on the ISE (excluding facilitation volume) was comprised of orders for five or fewer contracts executed by PMMs. During the term of the pilot, the Exchange has provided the statistics as required and made no adjustments to the order size for which the PMM receives priority as the percentage of orders for five or fewer contracts executed by PMMs did not approach the 40% threshold. The Exchange will continue to provide the required statistics during the pilot extension.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f.

[7] In approving the rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act[8] because it will facilitate transactions in securities, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market, by allowing the ISE to continue to operate its system on a pilot basis until August 1, 2001 according to the established allocation algorithm and allow market participants to rely upon the current features of the ISE's system, until such time as the Commission has the opportunity to review the ISE's request for permanent approval of its allocation algorithm.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the ISE has not requested any change to its existing allocation algorithm, which was previously approved by the Commission on a pilot basis. Rather, it has requested only a temporary extension of this pilot program until August 1, 2001, during which time the Commission expects to review the ISE's proposal for permanent approval. The Commission notes that it has received no complaints regarding the operation of the allocation algorithm during the pilot period. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[9]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is hereby approved on an accelerated basis as a pilot scheduled to expire on August 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–13529 Filed 5–29–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3337]

State of Iowa; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated May 21, 2001, the above-numbered Declaration is hereby amended to include Henry and Sac Counties in the State of Iowa as disaster areas caused by flooding and severe storms beginning on April 8, 2001 and continuing.

In addition, applications for economic injury loans from small businesses located in Cherokee, Crawford and Ida Counties in the State of Iowa may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 1, 2001 and for economic injury the deadline is February 1, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 23, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–13561 Filed 5–29–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3340]

Commonwealth of Puerto Rico; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated May 11, 2001, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on May 6, 2001 and continuing through May 11, 2001.

All other information remains the same, i.e., the deadline for filing applications for physical damage is July 15, 2001 and for economic injury the deadline is February 15, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 23, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–13560 Filed 5–29–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 18, 2001.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–9673
Date Filed: May 14, 2001
Parties: Members of the International Air Transport Association
Subject: PTC2 EUR 0377 dated May 11, 2001, TC2 Within Europe Expedited Resolution 002tt, PTC2 EUR 0378 dated May 11, 2001, TC2 Within Europe Expedited Resolution 002mm, PTC2 EUR 0379 dated May 11, 2001, TC2 Within Europe Expedited Resolution 002o, Intended effective dates: September 1, September 15, September 17, 2001

Docket Number: OST–2001–9674
Date Filed: May 14, 2001
Parties: Members of the International Air Transport Association
Subject: PTC2 EUR 0380 dated May 11, 2001, TC2 Within Europe Expedited Resolution 002p, PTC2 EUR 0381 dated May 11, 2001, TC2 Within Europe Expedited Resolution 002v, Intended effective dates: October 1, November 1, 2001.

Docket Number: OST–2001–9712
Date Filed: May 17, 2001
Parties: Members of the International Air Transport Association
Subject: PTC COMP 0808 dated May 18, 2001, Mail Vote 125—Resolution 010b, TC2/TC23 Special Passenger Amending Resolution from Germany, Intended effective date: June 1, 2001.

Dorothy Y. Beard

Federal Register Liaison.

[FR Doc. 01–13555 Filed 5–29–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Ford

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Ford Motor Company (Ford) for an exemption of a high-theft line, the Mercury Grand Marquis, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with

[8] 15 U.S.C. 78f(b)(5).
[9] 15 U.S.C. 78f.
[10] 15 U.S.C. 78s(b)(2).
[11] 17 CFR 200.30–3(a)(12).

the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated April 9, 2001, Ford requested an exemption from the parts marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Mercury Grand Marquis vehicle line beginning in MY 2002.

The petition is pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, which provides for exemptions based on the installation of an antitheft device as standard equipment for the entire line.

Review of Ford's petition disclosed that certain information was not provided in its original petition. Consequently, by telephone call on April 16, 2001, Ford was informed of its areas of deficiency. Subsequently on May 9, 2001, Ford submitted its supplemental information addressing these deficiencies. Ford's April 9 and May 9, 2001 submissions together constitute a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the line. Ford will install its antitheft device, the SecuriLock Passive Anti-Theft Electronic Engine Immobilizer System (SecuriLock) as standard equipment on the MY 2002 Mercury Grand Marquis. The system has been voluntarily installed as standard equipment on its Mercury Grand Marquis line since MY 2000.

In order to ensure the reliability and durability of the device, Ford conducted tests, based on its own specified standards. Ford provided a detailed list of the tests conducted and stated its belief that the device is reliable and durable since it complied with Ford's specified requirements for each test. The environmental and functional tests conducted were for thermal shock, high temperature exposure, low-temperature exposure, powered/thermal cycle, temperature/humidity cycling, constant humidity, end-of-line, functional, random vibration, tri-temperature parametric, bench drop, transmit current, lead/lock strength/integrity, output frequency, resistance to solvents, output field strength, dust, and electromagnetic compatibility. Ford requested confidential treatment for some of the information and attachments submitted in support of its petition. Ford's request for confidential treatment will be addressed by separate notification.

The Ford SecuriLock is a transponder-based electronic immobilizer system. The device is activated when the driver/operator turns off the engine by using the properly coded ignition key. When the ignition key is turned to the start position, the transceiver module reads the ignition key code and transmits the code to the powertrain's electronic control module (PCM). The vehicle's engine can only be started if the transponder code matches the code previously programmed into the powertrain's electronic control module. If the code does not match, the engine will be disabled.

Ford stated that there are seventy-two quadrillion different codes and each transponder is hard-coded with a unique code at the time of vehicle assembly. Additionally, Ford stated that communication between the SecuriLock transponder and the powertrain's electronic control module is encrypted and share security data, making them a matching pair. Consequently, the paired modules will not function in other vehicles if separated from each other.

Ford stated that its SecuriLock system incorporates a theft indicator using a light-emitting diode (LED) that provides a visual indicator to the driver/operator as to the ''set'' and ''unset'' condition of the device. When the ignition is initially turned to the ''ON'' position, a 3-second continuous LED indicates that the device is ''unset.'' When the ignition is turned to ''OFF,'' a flashing LED indicates the device is ''set'' and provides visual information that the vehicle is protected by the SecuriLock system. Ford states that the integration of the setting/unsetting device (transponder) into the ignition key assures activation of the device.

Ford believes that its new device is reliable and durable because its does not have any moving parts, nor does it require a separate battery in the key. If the correct code is not transmitted to the electronic control module (accomplished only by having the correct key), there is no way to mechanically override the system and start the vehicle. Furthermore, Ford stated that with the sophisticated design and operation of the electronic engine immobilizer system, conventional theft methods are ineffective (i.e., hot-wiring or attacking the ignition-lock cylinder). Ford reemphasized that any attempt to slam-pull the ignition-lock cylinder will have no effect on a thief's ability to start the vehicle.

Ford stated that the effectiveness of its SecuriLock device is best reflected in the reduction of the theft rates for its Mustang GT and Cobra models from MY 1995 to 1996. The SecuriLock antitheft device was voluntarily installed on all Mustang GT and Cobra models, and the Taurus LX and SHO models as standard equipment in MY 1996. In MY 1997, the SecuriLock system was installed on the entire Mustang vehicle line as standard equipment. Ford notes that a comparison of the National Crime Information Center's (NCIC) calendar year (CY)1995 theft data for MY 1995 Mustang GT and Cobra vehicles without an immobilizer device installed with MY 1997 data for Mustang GT and Cobra vehicles with an immobilizer device installed, shows a reduction in thefts of approximately 70% for the vehicles with the immobilizer. With the introduction of SecuriLock on all 2000 Taurus models, the NCIC data show a 63% drop in theft rate compared with the non-SecuriLock equipped 1999 Taurus models.

As part of its submission, Ford also provided a Highway Loss Data Institute (HLDI) theft loss bulletin, Vol. 15, No. 1, September 1997, which evaluated 1996 Ford Mustang and Taurus models fitted with the SecuriLock device and corresponding 1995 models without the SecuriLock device. The results as reported by HLDI indicated a reduction in overall theft losses by approximately 50% for both Mustang and Taurus models.

Additionally, Ford stated that its SecuriLock device has been demonstrated to various insurance companies, and as a result AAA Michigan and State Farm now give an antitheft discount for all Ford vehicles equipped with the SecuriLock device.

Ford's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lacks an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR part 542.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Ford proposes. In these instances, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft

devices from being effective protection against theft.

On the basis of comparison, Ford has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemptions from the parts-marking requirements.

Based on the evidence submitted by Ford, the agency believes that the antitheft device for the Mercury Grand Marquis vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that Ford has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Ford provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full Ford Motor Company's petition for an exemption for the MY 2002 Mercury Grand Marquis vehicle line from the parts-marking requirements of 49 CFR part 541.

If Ford decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, must fully mark the line as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 23, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–13553 Filed 5–29–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–8026 (PDA–26(R))]

Application by Boston & Maine Corp. for a Preemption Determination as to Massachusetts' Definitions of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice extending rebuttal period for public comment.

SUMMARY: RSPA is extending the period for interested parties to submit rebuttal comments on an application by Boston & Maine Corporation for an administrative determination whether Federal hazardous materials transportation law preempts the Commonwealth of Massachusetts' definitions of ''hazardous materials'' as applied to hazardous materials transportation.

DATES: Rebuttal comments received on or before June 12, 2001, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at ''http://dms.dot.gov.''

Comments must refer to Docket No. RSPA–00–8026 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on ''Help & Information'' to obtain instructions.

A copy of each comment must also be sent to (1) Robert B. Culliford, Esq., Corporate Counsel, Boston & Maine Corporation, Iron Horse Park, North Billerica, MA 01862, and (2) Ginny Sinkel, Esq., Assistant Attorney General, Commonwealth of Massachusetts, Office of the Attorney General, One Ashburton Place, Boston, Massachusetts 02108–1698. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Mr. Culliford and Ms. Sinkel at the addresses specified in the **Federal Register**.'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at ''http://rspa-atty.dot.gov.'' A paper copy of this list and index will be provided at no cost upon request to Ms. Christian, at the address and telephone number set forth in ''For Further Information Contact'' below.

FOR FURTHER INFORMATION CONTACT: Karin V. Christian, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), Room 8407, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On November 16, 2000, RSPA published a notice in the **Federal Register** inviting interested parties to submit comments on an application by Boston & Maine Corporation for an administrative determination of whether Federal hazardous materials transportation law preempts the Commonwealth of Massachusetts' definitions of ''hazardous materials'' as applied to hazardous materials transportation. See 65 FR 69365.

RSPA extended the period for commenting on the preemption determination application twice after receiving two requests from the Commonwealth of Massachusetts. Thus, RSPA extended the comment period to April 13, 2001, and the rebuttal comment period to May 29, 2001.

On May 21, 2001, Boston & Maine Corporation sent a letter to RSPA requesting a two-week extension to June 12, 2001, to file rebuttal comments. In its letter, Boston & Maine Corporation states that the Commonwealth of Massachusetts has assented to the request for an extension of time. Accordingly, RSPA is extending the rebuttal comment period to June 12, 2001.

Rebuttal comments should address whether and how Massachusetts' definitions of ''hazardous material'' are applied and enforced by the State with respect to transportation that is subject to the HMR.

Issued in Washington, DC on May 24, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–13554 Filed 5–29–01; 8:45 am]

BILLING CODE 4910–60–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 29, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0525.

Form Number: ATF F 5300.38.

Type of Review: Extension.

Title: Application for an Amended Federal Firearms License.

Description: This form is used when a Federal firearms licensee makes application to change the location of the firearms business premises. The applicant must certify that the proposed new business premises will be in compliance with State and local law for that location, and forward a copy of the application to the chief law enforcement officer having jurisdiction over the new premises.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 18,000.

Estimated Burden Hours Per Respondent: 1 hour, 15 minutes.

Estimated Total Reporting Burden: 22,500.

OMB Number: 1512–0526.

Form Number: None.

Type of Review: Extension.

Title: Implementation of Public Law 103–322, The Violent Crime Control and Law Enforcement Act of 1994.

Description: These regulations implement the provisions of Public Law 103–322 by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,107,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Reporting—6 minutes

Recordkeeping—2 hours, 42 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 458,942 hours.

Clearance Officer: Frank Bowers, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 01–13469 Filed 5–29–01; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 15, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 29, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0041.

Form Number: IRS Form 966.

Type of Review: Revision.

Title: Corporate Dissolution or Liquidation.

Description: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfer of property.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 26,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 1 min.

Learning about the law or the form—24 min.

Preparing and sending the form to the IRS—29 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 153,920 hours.

OMB Number: 1545–0754.

Regulation Project Number: LR–255–81 Final.

Type of Review: Extension.

Title: Substantiation of Charitable Contributions.

Description: Congress intended that the IRS prescribe rules and requirements to assure substantiation and verification of charitable contributions. The regulations serve these purposes.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Recordkeepers: 26,000,000.

Estimated Burden Hours Per Recordkeeper: 5 minutes.

Estimated Total Reporting/ Recordkeeping Burden: 2,158,000 hours.

OMB Number: 1545–0782

Regulation Project Number: LR–7 Final (TD 6629).

Type of Review: Extension.

Title: Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands.

Description: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section

934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources with the United States was contingent upon the taxpayers' compliance with the reporting requirements of section 934(d).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper: 22 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 184 hours.

OMB Number: 1545–1138.

Regulation Project Number: INTL–955–86 Final (TD 8350).

Type of Review: Extension.

Title: Requirements for Investments to Qualify Under Section 936(d)(4) As Investments in Qualified Caribbean Basin Countries.

Description: The collection of information is required by the Internal Revenue Service to verify that an investment qualifies under Internal Revenue Code (IRC) section 936(d)(4). The recordkeepers will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 30 hours.

Estimated Total Recordkeeping Burden: 1,500 hours.

OMB Number: 1545–1443.

Regulation Project Number: PS–25–94 Final (TD 8686).

Type of Review: Extension.

Title: Requirements to Ensure Collection of Section 2050A Estate Tax.

Description: The regulation provides guidance relating to the additional requirements necessary to ensure the collection of the estate of tax imposed under Section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOT'S). In order to ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associate with each option. In addition, under certain circumstances the trust is required to file an annual statement with the IRS disclosing assets held by the trust.

Respondents: Individuals or households.

Estimated Number of Respondents: 4,390.

Estimated Burden Hours Per Respondent: 1 hour, 23 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting Burden: 6,070 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Alexander T. Hunt (202) 395–7860,Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 01–13470 Filed 5–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 22, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 29, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0685.

Form Number: IRS Form 1363.

Type of Review: Extension.

Title: Export Exemption Certificate.

Description: This form is used by carriers of property by air to justify the tax-free transport of property. It is used by IRS as proof of tax exempt status of each shipment.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 49 min.

Learning about the law or the form—18 min.

Preparing, copying, assembling, and sending the form to the IRS—22 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 450,000 hours.

OMB Number: 1545–0915.

Form Number: IRS Form 8332.

Type of Review: Extension.

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.

Description: This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 150,000.

Estimated Burden Hours Per Respondents/Recordkeeper:

Recordkeeping—6 min.

Learning about the law or the form—5 min.

Preparing the form—7 min.

Copying, assembling, and sending the form to the IRS—13 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 82,500 hours.

OMB Number: 1545–1013.

Form Number: IRS Form 8612.

Type of Review: Extension.

Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 20.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 13 min.

Learning about the law or the form—1 hr., 47 min.

Preparing and sending the form to the IRS—1 hr., 58 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 196 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–13471 Filed 5–29–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Reporting and Procedures Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements contained within OFAC's Reporting and Procedures Regulations set forth at 31 CFR Part 501.

DATES: Written comments should be received on or before July 30, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or Barbara C. Hammerle, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex — 2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Procedures Regulations.

OMB Number: 1505–0164.

Agency Form Number: TD–F–90–22.50.

Abstract: The collections of information are contained in §§ 501.601 through 501.605, 501.801 and 501.803 through 501.807 and pertain to the operation of various economic sanctions programs administered by OFAC under 31 CFR Chapter V. Section 501.601 relates to the maintenance of records and § 501.602 relates to OFAC demands for information relative to any transaction or property subject to the provisions of 31 CFR Chapter V. Section 501.603 imposes reporting requirements pertaining to blocked assets and retained funds transfers. This information is required by OFAC to monitor compliance with regulatory requirements, to support diplomatic negotiations concerning the targets of sanctions, and to support settlement negotiations addressing U.S. claims. Section 501.604 requires the filing of reports for compliance purposes by U.S. financial institutions where a funds transfer is not required to be blocked but is rejected because the underlying transaction is otherwise prohibited. Section 501.605 requires reporting of information pertaining to litigation, arbitration, and other binding alternative dispute resolution proceedings in the United States to prevent the intentional or inadvertent transfer through such proceedings of blocked property or retained funds. Sections 501.801 and 501.803 through 501.805 relate to license requests; the amendment, modification or revocation of licenses; rulemaking; and document requests. Section 501.806 sets forth the procedures to be followed by a person seeking to have funds released at a financial institution if the person believes that the funds were blocked due to mistaken identity. Section 501.807 sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

The likely respondents and recordkeepers affected by the information collections contained in part 501 are financial institutions, business organizations, and legal representatives. The estimated total annual reporting and/or recordkeeping burden is approximately 26,250 hours. The estimated annual burden per respondent/record keeper varies from thirty minutes to 10 hours, depending on individual circumstances, with an estimated average of 1.25 hours. The estimated number of respondents and/or record keepers is 21,000. The estimated annual frequency of responses: 1–12.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Financial institutions, business organizations, and legal representatives.

Estimated Number of Respondents: 21,000.

Estimated Time Per Respondent: 1.25 hours.

Estimated Total Annual Burden Hours: 26,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2001.

Barbara C. Hammerle,

Acting Chief Counsel, Office of Foreign Assets Control.

[FR Doc. 01–13518 Filed 5–29–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements contained within the procedures set forth for persons to establish eligibility for payments authorized by section 2002 of the Victims of Trafficking and Violence Protection Act of 2000 (Act), Public Law No. 106–386 (''Section 2002''). Section 2002 directs the Secretary of the Treasury to make payments to persons who hold certain categories of judgments against Cuba or Iran in suits brought under 28 U.S.C. 1605(a)(7). The procedures pertaining to establishing eligibility for such payments are set forth in **Federal Register** notices published on November 22, 2000 at 65 FR 70382 and December 15, 2000 at 65 FR 78533.

DATES: Written comments should be received on or before July 30, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or Barbara C. Hammerle, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex—2d Floor, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division,Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., 1500 Pennsylvania Avenue, Annex— 2d Floor, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: Procedures for Payments to Persons Who Hold Certain Categories of Judgments Against Cuba or Iran.

OMB Number: 1505–0177.

Abstract: This information collection pertains to the procedures pertaining to payments to persons who hold certain categories of judgments against Cuba or Iran set forth in the **Federal Register** notices published by OFAC on November 22, 2000 and December 15, 2000. The collection of this information is required to enable the Department of Treasury to determine the eligibility of an applicant under Section 2002 of Public Law No. 106–386 and to complete processing of payments. The collection of information is voluntary, but submission of the information is required by OFAC in processing applications for payments authorized by Section 2002. The estimated average burden per applicant is 12 hours.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Persons who hold certain judgments against Cuba or Iran.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 240.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 23, 2001.

Barbara C. Hammerle,

Acting Chief Counsel, Office of Foreign Assets Control.

[FR Doc. 01–13519 Filed 5–29–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Special Enrollment Examination Advisory Committee; Notice of Partially Closed Meeting

AGENCY: Internal Revenue Service, Office of Director of Practice, Treasury.

ACTION: Notice of partially closed Federal advisory committee meeting.

SUMMARY: Notice is given of a partially closed meeting of the Special Enrollment Examination Advisory Committee.

DATES: The meeting will be held Wednesday, June 13, and Thursday, June 14, (8:30 a.m. to 5 p.m., both days) and Friday June 15 (8:30 to 11 a.m.) Written requests to speak at the meeting or to attend the public sessions of the meeting must be received no later than June 6, 2001.

ADDRESSES: The meeting will be held at the Headquarters Building of the IRS, 1111 Constitution Avenue, NW., Room 3716, Washington, DC. Written requests to speak at the meeting or to attend the public sessions of the meeting must be mailed, faxed, or e-mailed to: Internal Revenue Service, Office of Director of Practice, N:C:SC:DOP, Attn: Kathy Hughes, Designated Federal Officer, 1111 Constitution Avenue, NW., Washington, DC 20224; fax number 202–694–1934; e-mail address Kathy.E.Hughes@irs.gov.

FOR FURTHER INFORMATION CONTACT: Kathy Hughes, Designated Federal Officer, Special Enrollment Examination Advisory Committee, at 202–694–1851.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App., notice is hereby given of the June 13 through June 15 meeting of the Special Enrollment Examination Advisory Committee (''SEEAC''). The purpose of the meeting is to cover the following agenda:

Wednesday, June 13, 2001

8:30 a.m.–9:30 a.m.

Public Session: Welcome by Patrick W. McDonough, Director of Practice, and Kathy Hughes, Enrollment Program Manager and Designated Federal Officer for the SEEAC. Solicitation of interest in serving as SEEAC Chairperson and selection of SEEAC Chairperson.

9:30 a.m.–10:30 a.m.

Public Session: Administration of 2001 Special Enrollment Examination: Review and discussion of SEE Critique Meeting and test challenges.

10:30 a.m.–11:00 a.m.

Closed Session: Status of 2002 Special Enrollment Examination Questions.

11:00 a.m.–12:00 noon

Closed Session: Planning the 2003 Special Enrollment Examination (Division of Work, Timeline and Procedures)

1:30 p.m.–5:00 p.m.

Working Session: Breakout Groups-Review of Topics and Objectives

Thursday, June 14, 2001

8:30 a.m.–3:30 p.m.

Public Session: Review and Discussion of Special Enrollment Examination Procedures, Structure and Requirements.

3:30 p.m.–5:00 p.m.

Public Session: Opportunity for interested individuals to offer remarks germane to agenda topics or Enrolled Agent Program.

Friday, June 15, 2001

8:30 a.m.–9:30 a.m.

Public Session: Demonstration of Enrolled Agent web page. Review and discussion of content, proposed changes, and discussion of suggestions for improvement.

9:30 a.m.–11:00 a.m.

Public Session: Discussion of sub-committee recommendation re: Continuing Professional Education requirements.

Under section 10(a)(1) of FACA, advisory committee meetings are generally open to the public. However, under section 10(d) of FACA, the head of an agency to which an advisory committee reports may determine in writing that all or any portion of a meeting shall be closed to the public in accordance with section (c) of the Government in the Sunshine Act, 5 U.S.C. 552b. A written determination has been made that, pursuant to section (c)(9)(B) of the Government in the Sunshine Act, portions of the meeting designated above as a ''Closed Session'' should be closed to public observation.

Beginning at 3:30 on Thursday, June 14, interested persons may speak at the meeting in accordance with the following limitations: (1) speakers' remarks must be germane to the topics listed above or germane to the Enrolled Agent Program; and (2) remarks must be limited to no more than 10 minutes. Persons wishing to speak must send Kathy Hughes, the Designated Federal Officer, a written request, and the text or outline of their remarks, prior to the meeting in order to allow for the compilation of a speakers list. Speakers will be entered on the list in order of the receipt of their requests. No more than nine requests will be accepted. Speakers will be notified of their position on the list, or in case more than nine requests are received, that their requests to speak cannot be granted. Persons interested in attending the public session (but not speaking) must also send Kathy Hughes a written request prior to the meeting in order to allow for adequate seating. Every effort will be made to accommodate all requests for attendance.

Written requests to speak and written requests to attend must be received no later than June 6, 2001.

At any time, any interested person may submit a written statement concerning the SEE or the Enrolled Agent Program. Such statements will be considered by the Director of Practice and, at his discretion, may be referred to the Committee for discussion at a later meeting.

Dated: May 24, 2001.

Patrick W. McDonough,

Director of Practice.

[FR Doc. 01–13537 Filed 5–29–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 30, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants Final Designation of Critical Habitat for the Riverside Fairy Shrimp; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG34

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Riverside Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Riverside fairy shrimp (*Streptocephalus woottoni*), pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 2,790 hectares (6,870 acres) in Los Angeles, Orange, Riverside, San Diego, and Ventura counties, California, is designated as critical habitat.

Critical habitat identifies specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the Riverside fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. Critical habitat for the Riverside fairy shrimp includes those areas possessing one or more of the primary constituent elements.

Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule and economic analysis. We revised the proposal to incorporate or address new information received during the comment periods.

EFFECTIVE DATE: This rule becomes effective on June 29, 2001.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The endangered Riverside fairy shrimp (*Streptocephalus woottoni*) is a small aquatic crustacean (Order: Anostraca) that occurs in vernal pools, pool-like ephemeral ponds, and human-modified depressions from coastal southern California south to northwestern Baja California, Mexico. This species is typically found in pools, ponds, and depressions that are deeper than the basins that support the endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) (Hathaway and Simovich 1996). Water chemistry, depth, temperature, and ponding are considered important factors in determining fairy shrimp distribution (Belk 1977; Branchiopod Research Group 1996; Gonzales *et al.* 1996); hence, no individuals have been found in riverine or marine waters.

The Riverside fairy shrimp was first collected in 1979 by C.H. Eriksen and was identified as a new species in 1985 (Eng *et al.* 1990). Mature males are between 13 and 25 millimeters (mm) (0.5 to 1.0 inches (in.)) long. The cercopods (structures that enhance the rudder-like function of the abdomen) are separate with plumose setae (feathery bristles) along the borders. Mature females are between about 13 to 22 mm (0.5 to 0.87 in.) in total length. The brood pouch extends to the seventh, eighth, or ninth abdominal segment. The cercopods of females are the same as the males. Both sexes of Riverside fairy shrimp have the red color of the cercopods covering all of the ninth abdominal segment and 30 to 40 percent of the eighth abdominal segment. Nearly all species of fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of organic matter (Pennak 1989; Eng *et al.* 1990).

Basins that support Riverside fairy shrimp are typically dry a portion of the year, but usually are filled by late fall, winter, or spring rains, and may persist into April or May. All anostracans, including the Riverside fairy shrimp, deposit eggs or cysts (organisms in a resting stage) in the pool's soil to wait out dry periods. The hatching of the cysts usually occurs from January to March. The species hatches within 7 to 21 days after the pool refills, depending on water temperature, and matures between 48 to 56 days, depending on a variety of habitat conditions (Hathaway and Simovich 1996). The ''resting'' or ''summer'' cysts are capable of withstanding temperature extremes and prolonged drying. When the pools refill in the same or subsequent rainy seasons, some but not all of the eggs may hatch. Fairy shrimp egg banks in the soil may be composed of the eggs from several years of breeding (Donald 1983; Simovich and Hathaway 1997). Simovich and Hathaway (1997) found that only a fraction of the total cyst bank of anostracans in areas with variable weather conditions or filling periods, such as southern California, may hatch in any given year. Thus, reproductive success is spread over several seasons.

Vernal pools are discontinuously distributed in several regions of California (Keeler-Wolf *et al.* 1995), from as far north as the Modoc Plateau in Modoc County, south to the international border with Mexico in San Diego County. Vernal pools form in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1988; Thorne 1984; Zedler 1987; Simovich and Hathaway 1997). In years of high precipitation, overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Vernal pool studies indicate that the contribution of subsurface or overland water flows only contribute to volume to vernal pools in years of high precipitation when pools are already saturated (Hanes and Stromberg 1996) which may promote genetic exchange with the transfer of cysts and adults between pools.

Critical to the formation of vernal pools is the presence of nearly impermeable surface or subsurface soil layers and flat or gently sloping topography (less than 10 percent slope). Downward percolation of water in vernal pool basins is prevented by the presence of this impervious layer (Holland 1976, 1988). In southern California, these impervious layers are typically alluvial materials with clay or clay loam subsoils, and they often form a distinctive micro-relief known as Gilgai or mima mound topography (Cox 1984). Basaltic or granitic substrates (e.g., Hidden Lake and Santa Rosa Plateau in Riverside County) or indurated hardpan layers (e.g., coastal San Diego County) may contribute to poor drainage as well. Vernal pool studies conducted in the Sacramento Valley indicate that the contribution of subsurface or overland water flows is significant only in years of high precipitation when pools are already saturated (Hanes and Stromberg 1996).

On the coastal terraces in San Diego County, pools are associated with the Huerhuero, Stockpen, Redding, and Olivenhain soil series. Huerhuero and Stockpen soils were derived from marine sediments and terraces, while the Redding and Olivenhain soils series were formed from alluvium. The Redding and Olivenhain soils are believed to have supported the majority of the pools historically found in San Diego County. In Riverside County, the Santa Rosa Plateau has Murrieta stony clay loams and soils of the Las Posas series (Lathrop and Thorne 1976), and at Skunk Hollow the soils in the immediate area of the vernal pool are Las Posas clay loam, Wyman clay loam, and Willows soil (Service 1998).

Vernal pool systems are often characterized by different landscape features including mima mound (miniature mounds) micro-topography, varied pool basin size and depth, and vernal swales (low tract of marshy land). Vernal pool complexes that support one or more vernal pools are often interconnected by a shared watershed. This habitat heterogeneity (consisting of dissimilar elements or parts) may allow between-pool water flow, as well as fairy shrimp cysts, particularly during years of high rainfall.

Urban and water development, flood control, highway and utility projects, as well as conversion of wildlands to agricultural use, have eliminated or degraded vernal pools and/or their watersheds in southern California (Jones and Stokes Associates 1987). Changes in hydrologic patterns, certain military activities, unauthorized fills, overgrazing, and off-road vehicle use also may imperil this aquatic habitat and the Riverside fairy shrimp. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986). Anthropogenic (human origin) activities that reduce the extent of the watershed or that alter runoff patterns (i.e., amounts and seasonal distribution of water) may eliminate the Riverside fairy shrimp, reduce population sizes or reproductive success, or shift the location of sites inhabited by this species. The introduction of non-native plant species, competition with invading species, trash dumping, fire, and fire suppression activities were some of the reasons for listing the Riverside fairy shrimp as endangered on August 3, 1993 (58 FR 4138). Because of these threats, we anticipate that intensive long-term monitoring and management will be needed to conserve this species.

Historically, vernal pool soils covered approximately 500 square kilometers (km^2) (200 square miles (mi^2)) of San Diego County (Bauder and McMillan 1998). The greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Rancho Penasquitos, and Kearny Mesa, which account for 73 percent of all the pools destroyed in the region during the 7-year period between 1979 and 1986 (Keeler-Wolf *et al.* 1995). Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed between 1979 and 1990. Similar to San Diego County, vernal pool habitat was once extensive on the coastal plain of Los Angeles and Orange counties. Unfortunately, there has been a near-total loss of vernal pool habitat in these areas (Ferren and Pritchett 1988; Keeler-Wolf *et al.* 1995; Mattoni and Longcore 1997; Service 1998). Significant losses of vernal pools supporting this species have also occurred in Riverside County.

Previous Federal Action

The San Gorgonio chapter of the Sierra Club submitted a petition dated September 19, 1988, to list the Riverside fairy shrimp as endangered. The petitioner asserted that emergency listing for this species was appropriate. However, we determined that emergency listing was not warranted since the species was more widespread than first thought and occurred in at least one protected site. Nevertheless, we did publish a proposed rule to list the Riverside fairy shrimp as an endangered species in the **Federal Register** on November 12, 1991 (56 FR 57503). Because the species was not identified until 1985, and its existence remained known only to a few scientists until 1988, the proposed rule constituted the first Federal action on the Riverside fairy shrimp. We published the final rule to list the Riverside fairy shrimp as endangered in the **Federal Register** on August 3, 1993 (58 FR 41384). In 1998, the Vernal Pools of Southern California Recovery Plan (Recovery Plan) (Service 1998) was finalized. This Recovery Plan detailed the efforts required to meet the recovery needs of the Riverside fairy shrimp.

On June 30, 1999, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court for the Northern District of California for our failure to designate critical habitat for the Riverside fairy shrimp. On February 15, 2000, we entered into a settlement agreement with the plaintiff (*Southwest Center for Biodiversity* v. *United States Department of the Interior et al.,* C99–3202 SC). Under this settlement agreement, a final determination of critical habitat was to be completed by May 1, 2001. Subsequently, the plaintiffs agreed to our request to extend this deadline until May 22, 2001.

At the time of listing, we concluded that designation of critical habitat for the Riverside fairy shrimp was not prudent because such designation would not benefit the species. We were concerned that critical habitat designation would likely increase the degree of threat from vandalism, collecting, or other human activities. We believed that the publication of maps showing critical habitat units would result in additional habitat destruction through trampling, discing, grading, and intentional acts of habitat vandalism. Although we acknowledged that critical habitat designation may identify and call attention to areas important for conservation or requiring special protection, we concluded that the vandalism threat posed by designating critical habitat would outweigh these benefits.

Subsequently, in the course of working with local partners, planning for conservation and management of the Riverside fairy shrimp, responding to several Freedom of Information Act requests, and publishing the Vernal Pools of Southern California Recovery Plan (Service 1998), information about the locations of vernal pools, vernal pool complexes, and occurrences of Riverside fairy shrimp were widely distributed to the public. Since the release of these data, we have not documented an increase in the threats to the species through vandalism, collection, habitat destruction, or other means. The instances of likely vandalism, though real, were relatively isolated. In contrast, we have observed an increase in public interest in the subspecies and its conservation through survey efforts by species experts, scientific research, regional and local planning, and educational outreach. Based on the lack of an increase in vandalism threats, we have determined that the threats to the Riverside fairy shrimp and its vernal pool habitat from the specific instances of habitat destruction we identified in the final listing rule do not outweigh the broader educational, regulatory, and other possible benefits that a designation of critical habitat would provide for this subspecies. Specifically, the potential benefits include: (1) Triggering section 7 consultation in areas where it may not otherwise occur because, for example, the area becomes unoccupied; (2) focusing conservation activities in the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to this subspecies.

Therefore, we have determined that designation of critical habitat for the Riverside fairy shrimp is prudent.

The proposed rule designating critical habitat for the Riverside fairy shrimp was published on September 21, 2000 (65 FR 57136). In the proposal, we determined that it was prudent to designate approximately 4,880 hectares (ha) (12,060 acres (ac)) of lands in Los Angeles, Orange, San Diego, Riverside, and Ventura counties as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on November 20, 2000. On February 28, 2001, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for the Riverside fairy shrimp, and a notice of availability of the draft economic analysis on the proposed determination (66 FR 12754). This second public comment period closed on March 30, 2001.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and, thus, must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions we make are based upon the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the Riverside fairy shrimp,

we used the best scientific and commercial data available. These included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998), regional Geographic Information System (GIS) vegetation and species coverages (including layers for Los Angeles, Orange, Riverside, and San Diego counties), data collected on U.S. Marine Corps Air Station Miramar (Miramar) and U.S. Marine Corps Base Camp Pendleton (Camp Pendleton), and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. In addition, information provided in comments on the proposed designation and draft economic analysis were evaluated and considered in the development of this final designation.

As stated earlier, Riverside fairy shrimp occur in ephemeral pools and ponds that may not be present throughout a given year or from year to year. Therefore, critical habitat includes a mosaic of vernal pools, ponds, and depressions currently supporting Riverside fairy shrimp and vernal pool vegetation. One area has been included in which the current occupancy by Riverside fairy shrimp is not known, but which contains the primary constituent elements for the species and is considered essential to its conservation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These features include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements for the Riverside fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. These primary constituent elements are found in areas that support vernal pools or other ephemeral ponds and depressions and their associated watersheds. The primary constituent elements are: small to large pools with moderate to deep depths that hold water for sufficient lengths of time necessary for Riverside fairy shrimp incubation and reproduction, but not necessarily every year; the associated watershed(s) and other hydrologic features that support pool basins and their related pool complexes; flat or gently sloping topography; and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat. All designated critical habitat areas contain one or more of the primary constituent elements for the Riverside fairy shrimp.

Criteria Used To Identify Critical Habitat

In an effort to map areas essential to the conservation of the species, we used data on known Riverside fairy shrimp locations and those vernal pools and vernal pool complexes that were identified in the Recovery Plan (Service 1998) as essential for the recovery of the species, aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map), current aerial photography prints, and boundaries of approved habitat conservation plans (HCPs). We then evaluated those areas based on soil types, the hydrology, watershed, and topographic features including local variation of topographic position (i.e., coastal mesas or inland valleys). Following this evaluation, a 250-meter (m) (0.16 mile (mi)) Universal Transverse Mercator (UTM) grid was overlaid on top of those vernal pool complexes and their associated watersheds to describe the unit boundaries more precisely. Each unit of the grid was evaluated to determine whether it was appropriate to include in the critical habitat designation. The critical habitat units designated using this technique encompass either individual vernal pool basins or vernal pool complexes and provide additional assurances that watersheds and hydrologic processes are captured and maintained for this species. In those cases where occupied vernal pools were not specifically mapped in the Recovery Plan (Service 1998), we relied on recent scientific data to update the map coverage. For the purpose of this final determination, critical habitat units have been described using UTM coordinates derived from a 250-m (0.16-mi) grid that approximated the boundaries delineated from the digital aerial photography.

We could not depend solely on federally owned lands for critical habitat designation as these lands are limited in geographic location, size, and habitat quality within the current range of the Riverside fairy shrimp. In addition to the federally owned lands, we are designating critical habitat on non-Federal public lands and privately owned lands. All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management considerations or protection. The long-term survival and conservation of Riverside fairy shrimp is dependent upon the protection and management of existing occurrences, and the maintenance of ecological functions within these areas.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns or housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of the Riverside fairy shrimp. Our 250-m (0.16 mi) UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. Existing features and structures, such as buildings, roads, railroads, urban development, and other such developed features not containing primary constituent elements, are not considered critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

Lands designated as critical habitat for the Riverside fairy shrimp are considered to be occupied by the species with the exception of 12 ha (30 ac) within critical habitat Unit 2 in which the occupancy by the Riverside fairy shrimp is not known. The lands in which the occupancy is not known contain the primary constituent elements for the species, have been determined to be essential to the conservation of the species, and are under consideration as a reestablishment site, if the species does not occur there. Refer to the description for Unit 2 for our justification as to why this location is essential to the conservation of the Riverside fairy shrimp.

Critical Habitat Designation

The areas we are designating as critical habitat currently provide all of those habitat components necessary to meet the primary biological needs of the

Riverside fairy shrimp, as described in the Recovery Plan (Service 1998), and defined by the primary constituent elements. The approximate area encompassing designated critical habitat by county and land ownership is shown in Table 1. Critical habitat for the Riverside fairy shrimp includes approximately 2,790 ha (6,870 ac) in Los Angeles, Orange, Riverside, San Diego, and Ventura counties, California, and is based on the geographic location of vernal pools, soil types, and local variation of topographic position (i.e., coastal mesas or inland valleys). Lands proposed are under private, State, and Federal ownership and divided into five critical habitat units. A brief description of each unit, and reasons for designating it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE AREA ENCOMPASSING DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP [1]

County	Federal land	Local/state land	Private land	Total
Los Angeles	0 ha (0 ac)	0 ha (0 ac)	195 ha (480 ac)	195 ha (480 ac)
Orange	45 ha (110 ac)	5 ha (10 ac)	315 ha (780 ac)	365 ha (900 ac)
Riverside	0 ha (0 ac)	755 ha (1,865 ac)	1,005 ha (2,490 ac)	1,760 ha (4,355 ac)
San Diego	320 ha (770 ac)	0 ha (0 ac)	125 ha (305 ac)	445 ha (1,075 ac)
Ventura	0 ha (0 ac)	0 ha (0 ac)	25 ha (60 ac)	25 ha (60 ac)
Total	365 ha (880 ac)	760 ha (1,875 ac)	1,665 ha (4,115 ac)	2,790 ha (6,870 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.471 ac). Based on the level of imprecision of mapping at this scale, approximate hectares and acres have been rounded to the nearest 5.

Map Unit 1: Transverse Range Critical Habitat Unit, Ventura and Los Angeles counties, California (144 Ha (355 Ac))

The Transverse Range critical habitat unit includes the vernal pool habitat that is known to be occupied by the Riverside fairy shrimp and associated essential watershed which helps maintain the integrity and water quality of the vernal pool. These vernal pools are located at Cruzan Mesa, Los Angeles County, and the former Carlsberg Ranch, Ventura County. All lands designated within this unit are on private lands. These vernal pools represent the northern limit of occupied habitat for the Riverside fairy shrimp and may have genetic characteristics essential to the overall long-term conservation of the species (i.e., they may be genetically different from more centrally located populations) (Lesica and Allendorf 1995). Additionally, these vernal pools are the last remaining vernal pools in Los Angeles and Ventura counties known to support this species. The Recovery Plan for the Vernal Pools of Southern California (Service 1998) indicates that the conservation of the vernal pool habitat and associated watershed in this unit is essential to allow for the maintenance and recovery of the populations of Riverside fairy shrimp in Los Angeles and Ventura counties.

Map Unit 2: Los Angeles Basin-Orange Management Area, Los Angeles and Orange counties, California. (437 Ha (1,080 Ac))

The Los Angeles coastal prairie unit includes an approximately 13 ha (30 ac) area within and adjacent to the El Segundo Blue Butterfly Preserve, west of Pershing Drive at the Los Angeles International Airport that contains vernal pool habitat and its associated watershed essential to the conservation of the Riverside fairy shrimp. This area is, however, not known to be occupied by the Riverside fairy shrimp. This unit is the only suitable remnant of vernal pool habitat (vernal pool basin and its associated essential watershed) located within the historical coastal prairie landscape, which formerly extended from Playa del Rey south to the Palos Verdes Peninsula, an area of approximately 96 km^2 (37 mi^2). This landscape historically included the federally endangered California Orcutt grass (*Orcuttia californica*) and San Diego button-celery (*Eryngium aristulatum* var. *parishii*). This unit also supports versatile fairy shrimp (*Branchinecta lindahli*) and western spadefoot toad (*Scaphiopus hammondii*). Riverside fairy shrimp cysts were first collected east of Pershing Drive in 1997, but adult shrimp have not been found to date, likely due to the extensive disturbance to the landscape, including the introduction of fill material, changes in water chemistry, modification of the watersheds, and the resulting shortened duration of water ponding. We are not designating the area east of Pershing Drive due to the extensive alteration of the habitat that has occurred. However, we are designating the area west of Pershing Drive as critical habitat because it contains vernal pool habitat essential for the conservation of the Riverside fairy shrimp. Considering the extensive habitat available, populations of Riverside fairy shrimp in this region were likely robust and formed the core population between the Cruzan Mesa and Carlsberg Ranch pools (Unit 1), at the northern end of the range of the species, and the pool groups in central and southern Orange County. Conservation of the area west of Pershing Drive is necessary for the recovery of an isolated, formerly robust population that may have genetic characteristics important to the overall long-term conservation of the species.

In Orange County, this critical habitat unit includes the vernal pools and vernal pool-like ephemeral ponds and essential watershed lands at the Marine Corps Air Station El Toro, Chiquita Ridge, Tijeras Creek, Viejo parcel, Saddleback Meadows, and along the southern Orange County foothills. These vernal pool habitats are the last remaining vernal pools in Orange County known to support this species (58 FR 41384). The Orange County vernal pool habitat and essential associated watershed represent the vast majority of Riverside fairy shrimp habitat within this critical habitat unit. In addition, the Orange County pools represent a remnant complex of pools and vernal pool habitat unique to the Riverside fairy shrimp in southern Orange County. The Riverside fairy shrimp habitat in Orange County is geographically distinct from other pools within the species' range and is essential to the overall long-term conservation of the species. Therefore, as indicated in the Recovery Plan for the Vernal Pools of Southern California (Service 1998), the conservation of these vernal pools and their associated watersheds is essential to reduce the risk of extinction through random and natural events to Riverside fairy shrimp populations in Orange County and throughout its current range.

Map Unit 3: Western Riverside County Critical Habitat Unit, Riverside County, California (1,762 Ha (4,355 Ac))

The western Riverside County critical habitat unit includes the vernal pool basins and associated essential watersheds on the Santa Rosa Plateau and in Murrieta. These vernal pools and pool complexes represent the eastern limit of occupied Riverside fairy shrimp habitat, unique vernal pool habitat, and may have genetic characteristics important to the overall long-term conservation of the species (i.e., they may be genetically different from more centrally located populations) (Lesica and Allendorf 1995). Pools within this unit also support the federally endangered California Orcutt grass (*Orcuttia californica*) and vernal pool fairy shrimp (*Branchinecta lynchi*). These pools and their associated watersheds are essential for the conservation and recovery of the Riverside fairy shrimp as indicated in the Recovery Plan (Service 1998). This unit includes two of the five remaining populations of Riverside fairy shrimp in Riverside County. A third population, Skunk Hollow, is protected as part of an approved mitigation bank that is within the Rancho Bella Vista HCP area and as part of the conservation measures contained in the Assessment District 161 Subregional HCP. Of the remaining two vernal complexes containing Riverside fairy shrimp, one complex consists of a series of stock ponds in which the Riverside fairy shrimp was discovered after the publication of the proposed critical habitat designation. The other complex, which includes a basin (one of a series) adjacent to Lake Elsinore in which the Riverside fairy shrimp was found, was not identified as essential in the Recovery Plan and was, therefore, not included in this critical habitat designation.

Map Unit 4: North San Diego County Critical Habitat Unit, San Diego County, California (372 Ha (920 Ac))

The north San Diego County critical habitat unit includes essential vernal pool habitat and associated watersheds at Marine Corps Base Camp Pendleton and one pool complex within the City of Carlsbad. This unit encompasses approximately 312 ha (770 ac) in non-training areas within Camp Pendleton. These include pool complexes and lands within the associated watersheds in the Wire Mountain Housing Area, within the Cockleburr Sensitive Area, and lands leased to the State of California and included within San Onofre State Park. The Recovery Plan (Service 1998) includes these pool complexes and their watersheds within the San Diego North Coastal Mesas Management Areas. This critical habitat unit is included in the designation because the vernal pool habitat and associated watersheds on Marine Corps Base Camp Pendleton represent one of the largest populations of the Riverside fairy shrimp and vernal pool habitat in southern California. These parcels of land are being designated as critical habitat because they represent unique vernal pool habitat and are essential to the long-term conservation of the Riverside fairy shrimp as identified in the Recovery Plan (Service 1998).

Within the jurisdiction of the City of Carlsbad, one vernal pool complex is located at the Poinsettia Lane train station. This complex and its watershed are associated with a remnant parcel of coastal terrace habitat. These lands contain unique vernal pool habitat and are essential to the conservation of the Riverside fairy shrimp in northern San Diego County, as indicated in the Recovery Plan (Service 1998).

Map Unit 5: South San Diego County Critical Habitat Unit, San Diego County, California (63 Ha (155 Ac))

In the proposed rule (65 FR 57136), we had six units and this unit was known as unit 6. However, we deleted proposed unit 5 (Marine Corps Air Station, Miramar) from the final rule, so this unit has changed from unit 6 to unit 5.

The South San Diego County critical habitat unit is composed of private and Federal lands and includes the ephemeral basin and its associated watershed along the United States-Mexico border. This ephemeral basin is on Federal lands (Immigration and Naturalization Service (INS)) and represents the southern limit of occupied habitat for the Riverside fairy shrimp in the United States. This basin is identified in the Recovery Plan (Service 1998) as necessary for the conservation of the Riverside fairy shrimp in southern San Diego County by providing the remnant vernal pool habitat unique to this species. The protection provided through the designation of critical habitat will assist in the recovery efforts identified in the Recovery Plan.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be

implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect the Riverside fairy shrimp or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps of Engineers) under section 404 of the Clean Water Act (CWA), a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the Riverside fairy shrimp. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery, and actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Therefore, designation of critical habitat in areas occupied by the Riverside fairy shrimp is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Federal agencies already consult with us on activities in areas occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the CWA or activities carried out by or licensed by the U.S. Environmental Protection Agency, that could alter the watershed, water quality or quantity to an extent that water quality becomes unsuitable to support Riverside fairy shrimp, or any activity that significantly affects the natural hydrologic function of the vernal pool system and/or ephemeral pond or depression;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins;

(3) Regulation of airport improvement or maintenance activities by the Federal Aviation Administration;

(4) Military training and maneuvers on Camp Pendleton and Miramar, and other applicable Department of Defense (DOD) lands;

(5) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS; and

(6) Licensing of construction of communication sites by the Federal Communications Commission.

Any of the above activities that appreciably diminish the value of critical habitat to the degree that they affect the survival and recovery of the Riverside fairy shrimp may be considered an adverse modification of critical habitat. We note that such activities may also jeopardize the continued existence of the species.

All lands designated as critical habitat are within the current geographic range of the Riverside fairy shrimp, and are occupied by the species, and/or are likely to be used by the species, whether for foraging, breeding, growth of larvae, dispersal, migration, genetic exchange, and sheltering, with the exception of the lands within Unit 2. Lands within Unit 2 are not currently known to be occupied by the Riverside fairy shrimp. Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species or vernal pool habitat may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate significant additional regulatory protection or burden will result from this critical habitat designation.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship of Critical Habitat to Military Lands

Exclusions Under Section 3(5)(A)

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with

stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that habitat on bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection.

Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide sufficient conservation benefit to the species, (2) the plan must provide assurances that the conservation management strategies will be implemented, and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

We evaluated INRMPs for DOD land that was within the proposed critical habitat to determine whether any INRMPs met the special management criteria. To date, Miramar is the only DOD installation that has completed a final INRMP that provides for sufficient conservation management and protection for vernal pools and the Riverside fairy shrimp. We reviewed this plan and determined that it addresses and meets the three criteria. Therefore, lands on Miramar (proposed Critical Habitat Unit 5) do not meet the definition of critical habitat, and they have not been included in this final designation of critical habitat for the Riverside fairy shrimp.

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We have considered whether it is appropriate to exclude any DOD lands under section 4(b)(2).

In contrast to Miramar, Camp Pendleton has not yet completed their INRMP. Camp Pendleton has several substantial vernal pool complexes that support the Riverside fairy shrimp and are essential to the conservation of the species. In light of these factors, we proposed 2,295 ha (5,670 ac) on Camp Pendleton as critical habitat for the Riverside fairy shrimp.

The INRMP for Camp Pendleton will be completed by the statutory deadline of November 17, 2001. We will consult with the Marines under section 7 of the Act on the development and implementation of the INRMP. We fully expect that, once the INRMP is completed and approved, areas of Camp Pendleton included in the proposed critical habitat designation will not meet the definition of critical habitat, as they will require no additional special management or protection.

To date, as the INRMP for Camp Pendleton has not yet been completed and approved, these lands meet the definition of critical habitat. Nevertheless, we have determined that it is appropriate to exclude training areas on Camp Pendleton from this critical habitat designation under section 4(b)(2). The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while the INRMP is being completed. On March 30, 2000, at the request of the Marines, we initiated formal consultation with Camp Pendleton on their upland activities. These activities include military training, maintenance, fire management, real estate, and recreation programs. Upon completion, this consultation will address the 93 percent of that base not included in our 1995 opinion concerning their programmatic conservation plan for riparian and estuarine/beach ecosystems (Service 1995). Because of the immense complexity of dealing with a multitude of hard-to-define upland activities and numerous federally listed plants and animals, the consultation has been extended and is on-going.

The proposed critical habitat designation included about 2,295 ha (5,670 ac), or about 10 percent of the base. If critical habitat is designated within the training areas on Camp Pendleton for the Riverside fairy shrimp, the Marines believe they would be compelled to significantly curtail necessary training within the area designated as critical habitat, to the detriment of mission-critical training capability, until the consultation is concluded. As a result, the Camp Pendleton's utility as a Marine training site could be limited.

In contrast, the benefits of designating critical habitat within the training areas on Camp Pendleton now are small. The primary benefit of designation is the prohibition on destruction or adverse modification of critical habitat under section 7 of the Act. However, we believe that section 7 consultation on any proposed action on Camp Pendleton that would result in an adverse modification conclusion would also result in a jeopardy conclusion, and we are now engaged in formal consultation with the Marines on their activities in vernal pool habitat on the base. In addition, the Marines have a statutory obligation under the Sikes Act to complete an INRMP for Camp Pendleton. As noted above, we expect that, when completed and adopted, this INRMP will provide equal or greater protection to Riverside fairy shrimp habitat on Camp Pendleton than a critical habitat designation.

We conclude that the benefits of excluding training areas on Camp Pendleton exceed the benefits of including them in the critical habitat designation. Further, we have determined that excluding the training areas will not result in the extinction of the Riverside fairy shrimp, as sufficient vernal pools remain within the final critical habitat designation, and sections 7(a)(2) and 9 of the Act still apply to the activities affecting Riverside fairy shrimp on Camp Pendleton. This exclusion does not apply to the vernal pool complexes in the Wire Mountain Housing Area, within the Cockleburr Sensitive Area, and lands leased to the State of California and included within San Onofre State Park. Because these lands are used minimally, if at all, by the Marines for training, the 312 ha (770 ac) of lands proposed on Camp Pendleton and within the San Onofre State Park are retained in the final designation.

Relationship of Critical Habitat to Habitat Conservation Plans

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances the benefits of excluding legally operative HCPs, for which the Riverside fairy shrimp is a covered species and take has been authorized, will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities in such

habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their Implementing Agreements. These HCPs and Implementing Agreements include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, unless critical habitat has already been designated within the proposed plan area, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and through the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in virtually identical terms. Jeopardize the continued existence of means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat, by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The education benefits of critical habitat, including informing the public of areas that are important for long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe, that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. They include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Most regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs, and the benefits of excluding HCPs from designation to be significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in approved HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in which the Riverside fairy shrimp is a covered species on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

Section 4(b)(2) Evaluation of Specific HCPs

We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of HCPs for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Riverside fairy shrimp, while directing development and habitat modification to nonessential areas of lower habitat value.

Only HCPs within the boundaries of the proposed critical habitat units are discussed herein. Those approved and legally operative HCPs that provide coverage and incidental take approval for the Riverside fairy shrimp have been excluded from this designation.

A number of habitat planning efforts have been completed within the range of the Riverside fairy shrimp. Principal among these are the San Diego Multiple Species Conservation Program (MSCP) in San Diego County, the Rancho Bella Vista HCP, and the Assessment District 161 Subregional HCP in Riverside

County. The MSCP, through its subarea plans, provides conservation measures for the Riverside fairy shrimp as a covered species, although authorization for take, should any be needed, would come from a subsequent permitting process (typically through a section 7 consultation with the Corps of Engineers). The MSCP provides that the remaining Riverside fairy shrimp habitat within the Multiple Habitat Planning Area (MHPA) should be avoided to the maximum extent practicable. Unavoidable impacts to this remaining area of habitat are to be minimized and mitigated to achieve no net loss of wetland function and value, and to provide additional protective measures, including adaptive management, contained in the MSCP.

The Rancho Bella Vista HCP planning area includes a reserve established as a mitigation bank for the vernal pool that contains the Riverside fairy shrimp (Skunk Hollow), and the HCP includes the Riverside fairy shrimp as a covered species. The mitigation bank agreement, as confirmed in the HCP, provides management for the pool and watershed in perpetuity. The Riverside fairy shrimp is also a covered species under Assessment District 161 Subregional HCP, and this HCP provides for the protection and conservation of the remainder of Skunk Hollow's watershed.

Consequently, we find that the benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementing agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including these approved HCPs in critical habitat for the Riverside fairy shrimp include increased educational benefits and minor additional management protections and measures. The benefits of excluding these HCPs from designated critical habitat for the Riverside fairy shrimp include additional conservation measures for this and other listed species, preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. Therefore, we believe the benefits of exclusion outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We determined that the approved HCPs will not jeopardize the continued existence of the Riverside fairy shrimp, which means that they will not appreciably reduce the likelihood of the survival and recovery of the species.

We have not excluded the NCCP/HCP for the Central/Coastal Orange County subregion. This plan provides only conditional coverage for the Riverside fairy shrimp. Riverside fairy shrimp in vernal pool habitats that are highly degraded and/or artificially created are a covered species and take is authorized under the HCP. However, Riverside fairy shrimp in non-degraded, natural vernal pool habitats are not considered covered species under the HCP, and take, should any be needed, can be authorized only under a separate permitting process (typically through a section 7 consultation with the Corps of Engineers). Because the natural vernal pools within the Central/Coastal Orange County subregion that are considered to be high-quality habitat for the Riverside fairy shrimp are not covered by the current HCP, the benefits from designating this area as critical habitat are not outweighed by the benefits provided by the HCP. Therefore, we are including the natural vernal pools at the Viejo parcel, Tijeras Creek, and Marine Corps Air Station El Toro in this final critical habitat designation.

HCPs currently under development are intended to provide for the protection and management of habitat areas essential for the conservation of the Riverside fairy shrimp, while directing development and habitat modification to areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Riverside fairy shrimp. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Riverside fairy shrimp, and appropriate conservation management actions. Several HCP efforts are now under way that address listed and nonlisted species in areas within the range of the Riverside fairy shrimp that we are designating as critical habitat. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat in this rule and provide for the conservation of the covered species. Furthermore, we will complete intra-service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that includes the Riverside fairy shrimp is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Should additional information become available that changes our assessment of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise the designation accordingly. Similarly, if new information indicates any of these areas should not be included in the designated critical habitat because they no longer meet the definition of critical habitat, we may revise this final rule. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Summary of Comments and Recommendations

In the September 21, 2000, proposed rule (65 FR 57136), we requested all interested parties to submit comments on the specifics of the proposal including information, policy, treatment of HCPs, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on November 20, 2000. The comment period was reopened from February 28, 2001, to March 30, 2001 (66 FR 12754), to allow for additional comments on the proposed rule, and comments on the draft economic analysis of the proposed critical habitat. We accepted comments received from September 21, 2000, to

March 30, 2001, and entered them into the administrative record for the rule.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers in southern California: San Diego Union Tribune and Riverside Press Enterprise on September 25, 2000, and the Los Angeles Times on September 28, 2000. There were no requests for a public hearing.

We requested four biologists, who have familiarity with the Riverside fairy shrimp and the conservation of vernal pools, to peer review the proposed critical habitat designation. Two of the peer reviewers submitted comments on the proposed critical habitat designation, providing updated biological information, critical review, and editorial comments, and two did not respond.

We received a total of 632 written comments during the two comment periods. Comments were received from 1 Federal agency, 2 local agencies, and 617 private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Riverside fairy shrimp. Of the 632 comments we received, 621 commenters supported the designation of critical habitat for the Riverside fairy shrimp, 7 were opposed to it, and 4 provided information or declined to oppose or support the designation. Similar comments were grouped into four general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

(1) *Comment:* The scale of the proposed critical habitat is overly broad, resulting in vague unit boundaries. Several commenters questioned the biological justification for proposing critical habitat for the Riverside fairy shrimp using such a landscape-scale approach when more precise information is available for use by the Service. Also, some commenters voiced concern that their property was within proposed critical habitat boundaries even though the land contained no Riverside fairy shrimp or primary constituent elements.

Our Response: We are required to describe critical habitat (50 CFR 424.12(c)) with specific limits using reference points and lines as found on standard topographic maps of the area.

We recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the Riverside fairy shrimp. Due to the time constraints imposed by the court, and the absence of detailed map information during the preparation of the proposed determination, we used a 250-m (0.16-mi) UTM grid to delineate the critical habitat boundaries. Due to the mapping scale, some areas not essential to the conservation of the Riverside fairy shrimp were included within the boundaries of proposed critical habitat, such as towns, housing developments, or other developed lands unlikely to provide habitat for the Riverside fairy shrimp. Because these areas do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(2) *Comment:* The proposal does not provide adequate notice of location of critical habitat units to impacted landowners as per the 1978 amendments to the Act, causing a burden to landowners who must determine which portions of their land contain critical habitat.

Our Response: We identified specific areas in the proposed determination that are referenced by UTM coordinates, which are found on standard topographic maps. We also made available, during the public comment period at the Carlsbad Fish and Wildlife Office, a public viewing room where the proposed critical habitat units, superimposed on 7.5 minute topographic maps, could be inspected. Furthermore, we distributed geographic data and maps of the proposed critical habitat to all 34 individuals, organizations, local jurisdictions and State and Federal agencies that requested them. We believe the information made available to the public was sufficiently detailed to allow for determination of critical habitat boundaries. This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). The accompanying maps are for illustration purposes only. If additional clarification is necessary, contact the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

(3) *Comment:* The descriptions of the primary constituent elements of critical habitat for the Riverside fairy shrimp are vague.

Our Response: The description of the primary constituent elements for the Riverside fairy shrimp is based on the best available scientific and commercial data regarding the species, including a compilation of data from peer-reviewed published literature, unpublished or non-peer-reviewed survey or research reports, and biologists knowledgeable about the Riverside fairy shrimp and its habitat. The primary constituent elements, as described, represent our best estimate of what habitat components are essential for the conservation of the species.

(4) *Comment:* The proposed rule inappropriately uses a ''recovery standard'' to determine critical habitat, resulting in the inclusion of large areas in which the Riverside fairy shrimp is not known to occur or have occurred. The Service ignores the intent of Congress to designate only occupied areas and those areas essential to a species' conservation, and the Service has failed to determine if these unoccupied areas are essential to the Riverside fairy shrimp.

Our Response: The definition of critical habitat in section 3(5)(A) of the Act includes ''(i) specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.'' The term ''conservation,'' as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary'' (*i.e.,* the species is recovered and removed from the List of Endangered and Threatened Species).

In proposing critical habitat for the Riverside fairy shrimp, we identified those areas that are essential to the conservation of this species. The areas we proposed to designate as critical habitat provide all of those habitat components essential for the Riverside fairy shrimp as described in the Recovery Plan (Service 1998). We did not include all areas currently occupied by the Riverside fairy shrimp, but designated those areas that possess large populations, have unique ecological characteristics, and/or represent the historic geographic areas where the

Riverside fairy shrimp can be re-established.

The Recovery Plan (Service 1998) detailed the efforts required to meet the recovery needs of the Riverside fairy shrimp, and provides a description of habitat attributes that are essential to the survival and recovery of the species. After weighing the best available information, including the Recovery Plan, we conclude that the areas designated by this final rule, including areas that were not known to be occupied at the time the species was listed, are essential for the recovery of the species and subsequent removal from the List of Endangered and Threatened Species.

(5) *Comment:* The lands that are being proposed as critical habitat for the Riverside fairy shrimp represent a gross, unsubstantiated increase from the amount of habitat that was described in the final listing rule as being available for this species. In addition, the increase in number of known populations of Riverside fairy shrimp since listing indicates that designation of critical habitat may be unnecessary or unwarranted.

Our Response: In the August 3, 1993, final listing rule for the Riverside fairy shrimp (58 FR 41384), we stated that there were four occupied pools near Temecula in Riverside County, encompassing 96 km^2 (37 mi^2) (approximately 9,713 ha (24,000 ac)), one population in Orange County (area not quantified), an unspecified number of occupied vernal pools at (then) Naval Air Station (NAS) Miramar and Otay Mesa in San Diego County, and two locations in Baja California, Mexico.

Since the listing of this species, scientific and commercial studies on the distribution, life history, and ecology of the Riverside fairy shrimp have been conducted and a recovery plan covering the species published. We now recognize that conservation of the Riverside fairy shrimp depends not only on specific vernal pools, but also on vernal pool complexes, the watersheds immediately surrounding them, and the hydrological processes associated with those watersheds.

Further, the known geographic range of the species has been expanded based on the identification of previously undocumented Riverside fairy shrimp populations in Los Angeles, Orange, Riverside, San Diego, and Ventura counties. Many of these previously undocumented occurrences consist of small, isolated pools varying in condition from highly degraded to high quality. Large complexes of vernal pools containing Riverside fairy shrimp were also discovered on Camp Pendleton. These complexes, many of which are interconnected, contain the highest concentration of Riverside fairy shrimp within the species' range, with the pools and adjoining watersheds encompassing approximately 2,295 ha (5,670 ac).

The proposed determination of critical habitat for the Riverside fairy shrimp (65 FR 57136) identified approximately 4,880 ha (12,060 ac) of vernal pools and their adjacent watersheds essential to the conservation of the species that was proposed as critical habitat. This value is less than half of the lands identified as being occupied in Riverside County in the final listing rule. This final determination designates 2,790 ha (6,870 ac) as critical habitat.

Even though additional populations of the Riverside fairy shrimp have been discovered in the time since the species was listed, the factors that contributed to the decline of the species and its subsequent listing as federally endangered are still affecting vernal pool habitat and the species. Because these factors continue to affect the Riverside fairy shrimp and its habitat, the species still warrants protection under the Act, including the designation of lands essential to its conservation as critical habitat.

(6) *Comment:* No scientific data were provided to indicate how the Service determined the extent of watersheds or the hydrological processes that comprise critical habitat.

Our Response: As described in the section titled ''Criteria Used to Identify Critical Habitat,'' above, we compiled data on known Riverside fairy shrimp locations and those vernal pools and vernal pool complexes that were identified in the Recovery Plan as essential for the stabilization and recovery of the species. Second, we evaluated the hydrology, watershed, and topographic features of the surrounding areas to identify the drainages, or watersheds feeding the pools using our GIS system. Third, based on this evaluation, a 250-m (0.16-mi) UTM grid was overlaid on top of those vernal pool complexes and their associated watersheds using GIS to describe the unit boundaries more precisely. Each unit of the grid was evaluated to determine whether it was appropriately included as critical habitat. The critical habitat units designated using this technique encompassed individual vernal pool basins or vernal pool complexes to ensure that watersheds and hydrologic processes were captured and maintained for this species. Where occupied vernal pools were not specifically mapped in the Recovery Plan (Service 1998), we relied on recent scientific data to update the map coverage.

Issue 2: Policy and Regulations

(7) *Comment:* In response to the Service's request that the public comment on critical habitat designation relative to currently approved and future HCPs, many commenters stated that critical habitat should be retained within the boundaries of approved HCPs. They felt that HCPs cannot be viewed as a functional substitute for critical habitat designation, and the approved HCPs provided inadequate protection and special management considerations for the species and their habitat. Other commenters supported the exclusion of approved HCPs from critical habitat designation, and several of these same commenters wanted pending HCPs to be excluded as well. They supported their recommendations by asserting that landowners will be reluctant to participate in HCPs unless they have incentives, including the removal of critical habitat from HCP boundaries.

Our Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which the Riverside fairy shrimp is a covered species and the plan provides for its long-term conservation. These include the San Diego MSCP in San Diego County and the Rancho Bella Vista HCP and Assessment District 161 Subregional HCP in Riverside County.

We anticipate that future HCPs in the range of the Riverside fairy shrimp will include it as a covered species and provide for its long-term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including

minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the Riverside fairy shrimp. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the Riverside fairy shrimp is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the Riverside fairy shrimp as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). The development of new HCPs or NCCPs should not be affected by designation of critical habitat primarily because we view the standards of jeopardy for listed species and of adverse modification for critical habitat as being virtually identical. We discuss these standards in detail in the ''Section 7 Consultation'' portion of this document.

(8) *Comment:* The Service violated the National Environmental Policy Act of 1969 (NEPA) by failing to prepare an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS).

Our Response: We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

(9) *Comment:* The Service violated the Administrative Procedure Act by not making available for public review and comment the scientific data relied on in formulating the proposed rule, and not providing a complete list of references or access to unpublished data despite requests from interested parties.

Our Response: In the proposed rule, we stated that all supporting documentation, such as the references and unpublished data used in the preparation of the proposed rule, would be available for public inspection at the Carlsbad and Ventura Fish and Wildlife Offices. A public viewing room was made available at the Carlsbad Fish and Wildlife Office where the proposed critical habitat units, superimposed on 7.5 minute topographic maps, could be inspected. In addition, we had 34 requests for maps or GIS data and we responded to each request in a timely manner by providing copies of the maps and/or digital data. We believe we provided information pertaining to the proposed critical habitat to all those who requested it.

(10) *Comment:* Comments received from the Marines requested that their lands be excluded from the critical habitat designation because protections and management afforded the Riverside fairy shrimp by Miramar's INRMP, pursuant to the Sikes Act, was sufficient, so the lands on that base did not require special management or protection, and did not meet the definition of critical habitat. In addition, the Marines requested that Camp Pendleton be excluded from critical habitat because of its existing programmatic, habitat-based management efforts, which already ensure long-term conservation of the species. Furthermore, designation of critical habitat would detrimentally impact the Marines' capability to perform military missions. Other commenters felt that: (a) The vernal pools on the bases are essential for the conservation of the species; (b) no evidence exists that training activities on Camp Pendleton would be significantly limited, especially considering the small amount of land within the proposed critical habitat that actually contains primary constituent elements; and (c) Miramar's INRMP is a guidance document only and does not provide the special management or protection for the Riverside fairy shrimp.

Our Response: We agree that INRMPs provide special management for lands such that they no longer meet the definition of critical habitat when the plans meet the following criteria: (1) A current INRMP must be complete and provide conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the conservation management strategies will be effective and provide for periodic monitoring and revisions as necessary.

To date, Miramar is the only DOD installation that has completed a final INRMP that provides for sufficient conservation management and protection for the Riverside fairy shrimp. We have reviewed the plan and have determined that it addresses and meets the three criteria. Therefore, lands on Miramar (proposed Critical Habitat Unit 5) do not meet the definition of critical habitat, and have not been included in this final designation of critical habitat for the Riverside fairy shrimp.

Additionally, we have determined that it is appropriate to exclude training areas on Camp Pendleton from this critical habitat designation under section 4(b)(2) of the Act. We have concluded that the benefits of excluding training areas on Camp Pendleton exceed the benefits of including them in the critical habitat designation. Further, we have determined that excluding the training areas will not result in the extinction of the Riverside fairy shrimp, as sufficient vernal pools remain within the final critical habitat designation and sections 7(a)(2) and 9 of the Act still apply to the activities affecting Riverside fairy shrimp on Camp Pendleton. This exclusion does not apply to vernal pool complexes in the Wire Mountain Housing Area, within the Cockleburr Sensitive Area, and lands leased to the State of California and included within San Onofre State Park. Because these lands are used minimally, if at all, by the Marines for training, the 312 ha (770 ac) of lands proposed on Camp Pendleton and within the San Onofre State Park are retained in the final designation.

Please refer to the Exclusions Under Section 4(b)(2) section of this rule for a more detailed discussion of the exclusion of the training areas on Camp Pendleton from this final critical habitat designation.

(11) *Comment:* A number of commenters requested additional areas be designated as critical habitat, including all vernal pools identified in the Recovery Plan (Service 1998) and other lands, because these areas are needed for the conservation of the Riverside fairy shrimp.

Our Response: The Recovery Plan for the Vernal Pools of Southern California (Service 1998), discusses vernal pool complexes and pools, their distribution, and known occupancy by federally listed species at the time of the plan's publication. Not all vernal pools discussed in the plan are known to be

occupied by the Riverside fairy shrimp, or considered to be essential to the conservation of the Riverside fairy shrimp. Only those vernal pool habitats that are essential to the conservation of Riverside fairy shrimp were included in the critical habitat designation for the Riverside fairy shrimp.

(12) *Comment:* A number of commenters identified specific areas that they thought should not be designated as critical habitat. For example, one commenter does not believe the Moorpark vernal pool is essential to the conservation of the Riverside fairy shrimp because it is 40 km (25 mi) from the nearest population, it is the only population known in Ventura County, and in the proposed rule, there is no connection made between the site and the conservation of the species.

Our Response: Where site-specific information was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat, pursuant to section 3 of the Act, and made a determination as to whether modifications to the proposal were appropriate. We excluded lands from the final designation that we determined to be nonessential to the conservation of the Riverside fairy shrimp or located within an approved HCP for this species. We included lands in the final designation that we considered essential and which did not have special management sufficient for the species' conservation.

The isolation of the Moorpark vernal pool is not unique. Other than the individual pools in a complex of vernal pools, most vernal pools are isolated from each other by topography and hydrology. This isolation does not diminish the value of individual pools to the conservation of the Riverside fairy shrimp. In fact, and as the commenter notes, the Moorpark vernal pool is at the northwestern edge of the Riverside fairy shrimp distribution. Conservation biologists have demonstrated that populations at the edge of a species' distribution can be important sources of genetic variation and represent the best opportunity for colonization or re-colonization of unoccupied vernal pools and, thus, long-term conservation. These outlying populations may be genetically divergent from populations in the center of the range and, therefore, may have genetic characteristics that would allow adaptation in the face of environmental change. Such characteristics may not be present in other parts of the species' range (Lesica and Allendorf 1995). Considering these factors, the designation of the Moorpark vernal pool as critical habitat for the Riverside fairy shrimp meets the criterion defined in section 3(5)(A)(i) of the Act that critical habitat includes specific areas within the geographic range of the species on which are found the physical and biological features essential to the conservation of the species.

(13) *Comment:* The proposed boundary of critical habitat at the Lennar property is incorrect because it excludes portions of the watershed and includes areas that are outside of the watershed.

Our Response: We reviewed the boundaries of the vernal pool containing the Riverside fairy shrimp and the proposed critical habitat relative to the project/property boundaries submitted to us on behalf of Lennar-Moorpark LLC. The proposed critical habitat unit consists of four 250-m (0.16-mi) UTM grid squares that intersect in the center of the vernal pool. Therefore, any revisions to our mapping of the Unit would result in the removal of portions of the vernal pool and its watershed.

As indicated earlier in this determination, in defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns or housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of the Riverside fairy shrimp. Our 250-m (0.16-mi) UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. However, this minimum mapping unit does not exclude all developed areas, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other lands unlikely to contain the primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

(14) *Comment:* The construction of ponds west of Pershing Drive may attract birds, which could result in a wildlife hazard by increasing the threat of aircraft collisions with birds.

Our Response: We are in negotiations with Los Angeles World Airports on restoring vernal pool habitat west of Pershing Drive near Los Angeles International Airport (LAX), and using dormant Riverside fairy shrimp cysts that occur east of Pershing Drive to innoculate the new pools. While we understand the safety concerns regarding birds and aircraft collisions, we do not believe that restoring this vernal pool habitat will increase the amount of wildlife in the area, especially with the close proximity of the proposed vernal pools and LAX to the Pacific Ocean.

Issue 3: Economic Issues

(15) *Comment:* The Service did not provide for adequate public notice of the proposed rule and sufficient opportunity for public comment. Additionally, the proposed rule was not accompanied by an economic analysis as required by law.

Our Response: We published the proposed rule to designate critical habitat for the Riverside fairy shrimp on September 21, 2000 (65 FR 57136), and accepted comments from the public for 60 days, until November 20, 2000. We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment on the proposed rule. In addition, we invited public comment through the publication of notices in the San Diego Union Tribune and Riverside Press Enterprise on September 25, 2000, and the Los Angeles Times on September 28, 2000. We published a notice in the **Federal Register** on February 28, 2001 (66 FR 12754), announcing the availability of the draft economic analysis and opening a public comment period from February 28, 2001, to March 30, 2001, to allow for comments on the draft economic analysis and additional comments on the proposed determination itself. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. We also published the draft economic analysis and associated material on our Fish and Wildlife Office internet site following the draft's release on February 28, 2001. Because of the court-ordered time frame, we were not able to extend the second comment period or open an additional public comment period.

(16) *Comment:* Within the proposed rule, there are assumptions that the rule is not expected to result in any restrictions in addition to those currently in place.

Our Response: In the proposed rule and draft economic analysis, we indicated that we did not expect that the designation of critical habitat would provide significant additional regulatory or economic burdens or restrictions incremental to those afforded the species pursuant to the Act. This assertion is based on the regulatory protections afforded vernal pools and the federally listed species that occur

within them by the Corps of Engineers (Corps) pursuant to section 404 of the CWA and section 7 of the Act. Following a review of our consultation history with the Corps, it appears that the Corps has consulted with us on every project that may have affected vernal pools for which they have issued permits. Because of this consultation history with the Corps, we do not believe that critical habitat will provide any significant additional regulatory burdens or restrictions.

(17) *Comment:* A couple of commenters were concerned that our economic analysis was incorrect to assume that a Regulatory Flexibility Analysis was not required.

Our Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will, in fact, not have a significant economic impact on a substantial number of small entities and as a result, we do not need to prepare either an initial or final regulatory flexibility analysis.

Our economic analysis identified several potential impacts associated with critical habitat designation, including increased consultation costs, project modification costs, and potential temporary decreases in property values. However, because we have only designated property that is within the geographic range occupied by the Riverside fairy shrimp, and because this species is federally listed, other Federal agencies are already required to consult with us on activities that they authorize, fund, permit, or carry out that may affect the Riverside fairy shrimp. Any associated costs related to these consultations, including project modifications, will therefore be attributable to the listing of the species and not to designation of critical habitat. In a few instances, completed (or near-complete) consultations may have to be reinitiated once the critical habitat designation is finalized to ensure Federal agencies' responsibilities under section 7 are met. As a result, the critical habitat designation could result in an economic effect associated with any delays to complete these consultations. Similarly, most decreases in property values, to the extent that they can be attributed to the Riverside fairy shrimp and result from actual restrictions in land use, would be a result of its listing and not because of critical habitat designation. We recognize that the market response to a critical habitat designation, due to the perception of an increased regulatory burden, may lower real estate values on lands within the designation. However, we expect this decrease in value to be temporary. Our draft and final economic analysis further discusses how we arrived at our conclusion regarding impacts to small entities.

(18) *Comment:* Several commenters stated that we should have analyzed the cumulative effect of the critical habitat designation for the Riverside fairy shrimp, along with the effect of existing and proposed critical habitat for other species in the area.

Our Response: The commenters appear to be using the term ''cumulative impacts'' in the context of the National Environmental Policy Act. This is not appropriate in analyzing the effects of a regulation designating critical habitat for a listed species. We are required to consider only the effect of the proposed government action, which in this case is the designation of critical habitat for the Riverside fairy shrimp. The appropriate baseline to use in this analysis is the regulatory environment without this regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with this designation of critical habitat. Because the Riverside fairy shrimp is a federally protected species, any effects the listing has on the regulated community is considered part of the baseline scenario, which remains unaffected by our critical habitat designation. Existing and proposed critical habitat designations for other species in the area will be part of separate rulemakings, and consequently, their economic effects will be considered separately.

(19) *Comment:* The draft economic analysis failed to consider the effect critical habitat designation would have on the demand for new housing, and the economic analysis ignores the impact of the designation on California's critical housing shortage.

Our Response: We are aware that some of the land that we have proposed as critical habitat for the Riverside fairy shrimp faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to some type of Federal nexus before work actually begins. As a result, we expect that future consultations will, in part, include planned and future real estate development.

However, we believe that these resulting consultations will not take place solely with respect to critical habitat issues. While it is true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation regardless of the critical habitat designation. Again, as we have previously mentioned, section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out may affect a listed species or adversely modify its critical habitat.

We also recognize that, in some instances, the designation of critical habitat could result in a distorted real estate market because participants may believe that land within critical habitat designation is subject to additional constraints. This is not the case because critical habitat designation for the Riverside fairy shrimp is not adding any significant additional protection, nor impacting landowners significantly beyond that associated with the listing of the species as endangered under the Act. As a result, we believe that any resulting distortion will be temporary and have a relatively insignificant effect on the real estate market as it should become readily apparent to market participants that critical habitat for the Riverside fairy shrimp is not imposing any significant additional constraints on landowner activities beyond those currently associated with the listing.

(20) *Comment:* One commenter expressed concern that the Service failed to quantify section 7 consultation costs on projects when designating critical habitat for the Riverside fairy shrimp.

Our Response: In the draft economic analysis, which was made available to the public on February 28, 2001 (66 FR 12754), there is a section that specifically discusses the cost estimates of completing section 7 consultations. These costs are developed through a review of consultation files, and estimating the level of effort of the Service, the action agency, and the applicant during both formal and informal consultations. Costs associated with these consultations include preparation of a biological assessment as well as the costs of the consultation itself. Also, please refer to our response to Comment 23.

(21) *Comment:* Some commenters were concerned that, while we discussed impacts that are more appropriately attributable to the listing of the Riverside fairy shrimp than to the proposed designation of critical habitat, we did not include the baseline costs attributable to the listing or provide quantified estimates of the costs associated with the listing.

Our Response: The Act is clear that the listing decision be based solely on the best available scientific and commercial data available (section 4(b) of the Act). Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that ''economic considerations have no relevance to determinations regarding the status of species * * *.'' If we were to consider the economic impacts of listing in the critical habitat designation analysis, it would lead to confusion, because the designation analysis is meant to determine whether areas should be excluded from the designation of critical habitat based solely upon the costs and benefits of the designation, and not upon the costs and benefits of the species' listing. Our economic analyses address how our actions may affect current or planned activities and practices; they do not address impacts associated with previous Federal actions, which includes the listing of the Riverside fairy shrimp as an endangered species.

(22) *Comment:* The assumption that future section 7 consultations would not be subject to regulatory uncertainty and legal challenge, and that the designation of critical habitat will cause no impacts above and beyond those caused by listing of the species is faulty, legally indefensible, and contrary to the Act. ''Adverse modification'' and ''jeopardy'' are different, will result in different impacts, and should be analyzed as such in the economic analysis.

Our Response: We disagree with the commenter's assertion that ''jeopardy'' and ''adverse modification'' represent different standards. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned.

(23) *Comment:* Many commenters expressed concern that the draft economic analysis failed to quantify the effects of proposed critical habitat designation.

Our Response: We were only able to identify the types of impacts likely to occur as a result of the proposed critical habitat designation. These impacts include new consultations, reinitiation of consultations, and perhaps the need for additional time for completion of ongoing consultations to address critical habitat concerns, as required under section 7 of the Act. In some of these cases, it is possible that we might suggest reasonable and prudent alternatives to the proposed activity that triggered the consultation, which would also be an impact. Also associated with consultations is the length of time required to carry out consultations, which may result in opportunity costs associated with project delays.

In the case of proposed critical habitat for the Riverside fairy shrimp, we have designated habitat that is within the geographic range occupied by the species. As a result, impacts are not likely to be significant because Federal agencies are already required to consult with us on activities taking place on lands that have the potential to adversely affect the Riverside fairy shrimp.

We also recognize that in some instances, the designation of critical habitat could result in a distorted real estate market because participants may incorrectly perceive that land within critical habitat designation is subject to additional constraints. In truth, this is not the case because critical habitat designation for the Riverside fairy shrimp is not adding any significant additional protection, nor resulting in significant impacts to landowners beyond those associated with the listing of the species as endangered under the Act. As a result, we believe that any resulting distortion will be temporary and have a relatively insignificant effect on the real estate market, as it should become readily apparent to market participants that critical habitat for the Riverside fairy shrimp is not imposing any significant additional constraints on landowner activities beyond those currently associated with the listing.

(24) *Comment:* Some commenters felt that the economic analysis is flawed because it is based on the premise that we have proposed designating only occupied habitat as critical habitat.

Our Response: The determination of whether or not proposed critical habitat is within the geographic range occupied by the Riverside fairy shrimp is part of the biological decision-making process and lies beyond the scope of an economic analysis. Please refer to our response to Comment 16 and the Methods section of this rulemaking for a discussion of the decision-making process.

(25) *Comment:* One commenter was concerned because our economic analysis failed to consider the impact of critical habitat on implementation of the Southern California Association of Governments and the San Diego Association of Governments regional transportation plans.

Our Response: Because we have determined that the lands designated as critical habitat are within the geographic range occupied by the Riverside fairy shrimp, this designation does not present any significant additional regulatory burdens upon regional transportation projects beyond those attributable to the listing of the Riverside fairy shrimp as a federally endangered species. Consequently, we do not believe that the designation of critical habitat for the fairy shrimp adds any significant additional economic burden within critical habitat boundaries.

(26) *Comment:* One commenter suggested that we failed to consider the impacts of the final designation of critical habitat for the Riverside fairy shrimp on regional air quality plans in Southern California.

Our Response: We did not take into consideration potential impacts from the proposed critical habitat designation on regional air quality plans. In order to do so, we would first have to: (1) Establish the potential incremental impacts resulting from critical habitat, (2) establish the percentage of these potential impacts that could affect regional air quality plans, and then (3) attempt to quantify the economic impacts resulting from the potential incremental impacts to air quality that are attributable to critical habitat. Because we believe that incremental impacts resulting from critical habitat are not significant, therefore not resulting in an additional significant regulatory or economic burden above and beyond that attributable to the listing of the species, we do not believe that the designation of critical habitat would have a significant effect on regional air quality planning.

Issue 4: Other Relevant Issues

(27) *Comment:* One commenter wanted to know if the Riverside fairy shrimp is actually the same species as the San Diego fairy shrimp, and whether there is a commonality of habitat.

Our Response: We may have inadvertently caused some confusion about the taxonomy of fairy shrimp in southern California by two errors on page 57137 of the proposed rule (65 FR 57136). We misidentified San Diego fairy shrimp as *Streptocephalus sandiegonensis*, instead of the correct *Branchinecta sandiegonensis*. We also mistakenly stated that the Riverside fairy shrimp is closely related to the San Diego fairy shrimp. We apologize for the errors. Although the two organisms belong to the same scientific order, they are not closely related, but are members of different genera and families.

Additionally, in general terms of habitat, the Riverside fairy shrimp inhabits pools, ponds, and depressions that are deeper than the basins that support the endangered San Diego fairy shrimp.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat and economic analysis for the Riverside fairy shrimp, we reevaluated our proposed designation of critical habitat for this species. These changes include the following: (1) The removal of subunit 2H in southern Orange County from the designation because the vernal pool had previously been destroyed by the construction of Antonio Parkway; (2) corrections to area designated by land ownership (Table 1) based on the use of updated GIS land ownership coverages; (3) removal of Miramar (proposed Critical Habitat Unit 5) from critical habitat designation due to an existing, finalized INRMP; (4) removal of the training areas on Camp Pendleton from the designation under section 4(b)(2) of the Act; (5) changing the name of proposed Critical Habitat Unit 6 to Critical Habitat Unit 5 for this final designation.

During the comment period for the proposed determination of critical habitat for the Riverside fairy shrimp, we received comments from the Marine Corps requesting the removal of Marine Corps Air Station Miramar from the designation because they believed their final INRMP adequately protected and managed for the Riverside fairy shrimp. We have evaluated this plan and determined that the conservation management measures and protections afforded the Riverside fairy shrimp are sufficient to ensure its conservation on this base (see discussion under the Exclusions Under section 3(5)(A) Definition section of this rule and in response to Comment 10). Therefore, we have not included Miramar in this final determination of critical habitat for Riverside fairy shrimp.

We also determined that it is appropriate to exclude the training areas on Camp Pendleton from this critical habitat designation. Under section 4(b)(2) of the Act, we weighed the benefits of excluding Camp Pendleton land against the benefits of designating these areas and concluded that the benefits of excluding the areas outweigh the benefits of including them. The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while formal consultation on upland activities at the base is being completed. The acreage being designated as critical habitat for the Riverside fairy shrimp on Camp Pendleton has been reduced from 2,295 ha (5,670 ac) to 312 ha (770 ac). The areas designated include pool complexes at the Wire Mountain Housing Area, within the Cockleburr Sensitive Area, and on lands leased to the State of California and included within San Onofre State Park. Refer to the Exclusions Under Section 4(b)(2) section and response to Comment 10 for a more complete discussion of this issue.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Economic effects caused by listing the Riverside fairy shrimp as an endangered species, and by other statutes, are the baseline against which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic and conservation effects and benefits of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of Riverside fairy shrimp critical habitat designation was prepared (Industrial Economics, Incorporated 2001) and made available for public review (February 28 through March 30, 2001; 66 FR 12754). The final analysis, which reviewed and incorporated public comments, concluded that no significant additional economic impacts are anticipated from the critical habitat designation above and beyond those already attributable to the listing of the Riverside fairy shrimp as an endangered species. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. The analysis examined the effects of the proposed designation on: (1) Re-initiation of section 7 consultations, (2) length of time in which section 7 consultations are completed, and (3) new consultations resulting from the determination. Because areas proposed for critical habitat are primarily within the geographic range occupied by the Riverside fairy shrimp, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation whether or not critical habitat is designated. In those limited cases where activities occur on designated critical habitat where Riverside fairy shrimp and other listed species are not found at the time of the action, section 7 consultation with the Service may be necessary for actions funded, authorized, or carried out by Federal agencies.

We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no significant additional regulatory burden or associated significant additional costs would accrue because of critical habitat above and beyond those attributable to the listing of the Riverside fairy shrimp. Our economic analysis does recognize that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. We believe these impacts will be short-term, however.

In summary, our economic analysis concludes that no, or minimal, significant incremental costs are anticipated as a result of the designation of critical habitat. This estimate is based on the existing consultation history with

the Corps on projects that may affect vernal pools and increased public awareness regarding the actual impacts of critical habitat designation on land values.

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The Riverside fairy shrimp was listed as an endangered species in 1993. In fiscal years 1997 through 1999, we conducted seven formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the fairy shrimp.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of listed species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the designated critical habitat currently occupied by Riverside fairy shrimp would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species). Additionally, designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden because the Corps of Engineers requires review of projects requiring permits in all vernal pools, whether it is known that Riverside fairy shrimp are present or not. In those limited cases where activities occur on designated critical habitat where Riverside fairy shrimp and other listed species are not found at the time of the action, additional section 7 consultation with the Service not previously required may be necessary for actions funded, authorized, or carried out by Federal agencies.

TABLE 2.—IMPACTS OF RIVERSIDE FAIRY SHRIMP LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected [3].	Activities such as those affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act; road construction and maintenance, right-of-way designation, and regulation of agricultural activities; regulation of airport improvement activities under Federal Aviation Administration jurisdiction; maintenance, management, and construction activities on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands; construction of roads and fences along the international border with Mexico and associated immigration enforcement activities by the Immigration and Naturalization Service; construction of communication sites licensed by the Federal Communications Commission; and activities funded by any Federal agency.	None in occupied habitat. In unoccupied habitat containing vernal pools, additional consultations are not anticipated because the Corps of Engineers already initiates consultations in these areas.
Private or other non-Federal Activities Potentially Affected [4].	Activities such as removing or destroying Riverside fairy shrimp habitat (as defined in the primary constituent elements discussion), whether by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding)).	None in occupied habitat. In unoccupied habitat containing vernal pools, additional consultations are not anticipated because the Corps of Engineers already initiates consultations in these areas.

[1] This column represents the activities potentially affected by listing the Riverside fairy shrimp as an endangered species (August 3, 1993; 58 FR 41384) under the Endangered Species Act.

[2] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Riverside fairy shrimp since the listing in 1993. The prohibition against adverse modification of critical habitat is not expected to impose any significant restrictions in addition to those that currently exist in occupied areas of designated critical habitat. Because of the potential for impacts on other Federal agencies' activities, we will continue to review this final action for any inconsistencies with other Federal agencies' actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations

of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in a significant increased regulatory burden because the Corps of Engineers already requires review of projects involving vernal pools, whether it is known that Riverside fairy shrimp are present or not. In those limited cases where activities occur on designated critical habitat where Riverside fairy shrimp and other listed species are not found at the time of the action, section 7 consultation with us may be necessary for actions funded, authorized, or carried out by Federal agencies.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities.

As discussed in the economic analysis for this rulemaking and the preamble above, this rule is not expected to result in any significant restrictions in addition to those currently in existence for areas occupied by the Riverside fairy shrimp and designated as critical habitat. As indicated in Table 1 (see Critical Habitat Designation section), we designated critical habitat on property owned by Federal, State, and local governments and private property, and identified the types of Federal actions or authorized activities that are of potential concern (Table 2). If these activities sponsored by Federal agencies within the designated critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization, as discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any significant additional effects on these activities in areas of critical habitat occupied by the species. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in a significant increased regulatory burden since the Corps of Engineers already requires review of projects involving vernal pools because vernal pools typically contain listed species for which the Corps must consult with us under section 7. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Therefore, we are certifying that this final designation of critical habitat is not expected to have a significant adverse impact on a substantial number of small entities. Thus, no regulatory flexibility analysis is necessary.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (EO 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied designated critical habitat. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden because the Corps of Engineers already requires review of projects involving vernal pools as vernal pools typically contain listed species for which the Corps of Engineers must consult with us under section 7. In those limited cases where activities occur on designated critical habitat where Riverside fairy shrimp and other listed species are not found at the time of the action, section 7 consultation with the Service may be necessary for actions funded, authorized, or carried out by Federal agencies.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Riverside fairy shrimp. Due to current public knowledge of the species' protection under the ESA, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in an increased regulatory burden because the Corps already requires review of projects involving vernal pools as vernal pools typically contain listed species for which the Corps must consult with us under section 7. In those limited cases where

activities occur on designated critical habitat where Riverside fairy shrimp and other listed species are not found at the time of the action, section 7 consultation with the Service may be necessary for actions funded, authorized, or carried out by Federal agencies.

Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival and recovery of the Riverside fairy shrimp.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat proposal with, appropriate State resource agencies in California. We will continue to coordinate any future designation of critical habitat for the Riverside fairy shrimp with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the Riverside fairy shrimp imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Riverside fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's requirement at and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the Riverside fairy shrimp because these lands do not support populations, nor do they provide essential habitat. Therefore, critical habitat for the Riverside fairy shrimp has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this document are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

For the reasons given in the preamble, we hereby amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Fairy shrimp, Riverside'' under ''CRUSTACEANS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CRUSTACEANS							
*	*	*	*	*	*	*	
Fairy shrimp, Riverside.	*Streptocephalus woottoni*.	U.S.A.(CA)	Entire	E	512	17.95(h)	NA
*	*	*	*	*	*	*	

3. In § 17.95 add critical habitat for the Riverside fairy shrimp (*Streptocephalus woottoni*) under paragraph (h) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Riverside Fairy Shrimp (*Streptocephalus woottoni*)

1. Critical habitat units are depicted for Los Angeles, Orange, Riverside, San Diego, and Ventura counties, California, on the maps below.

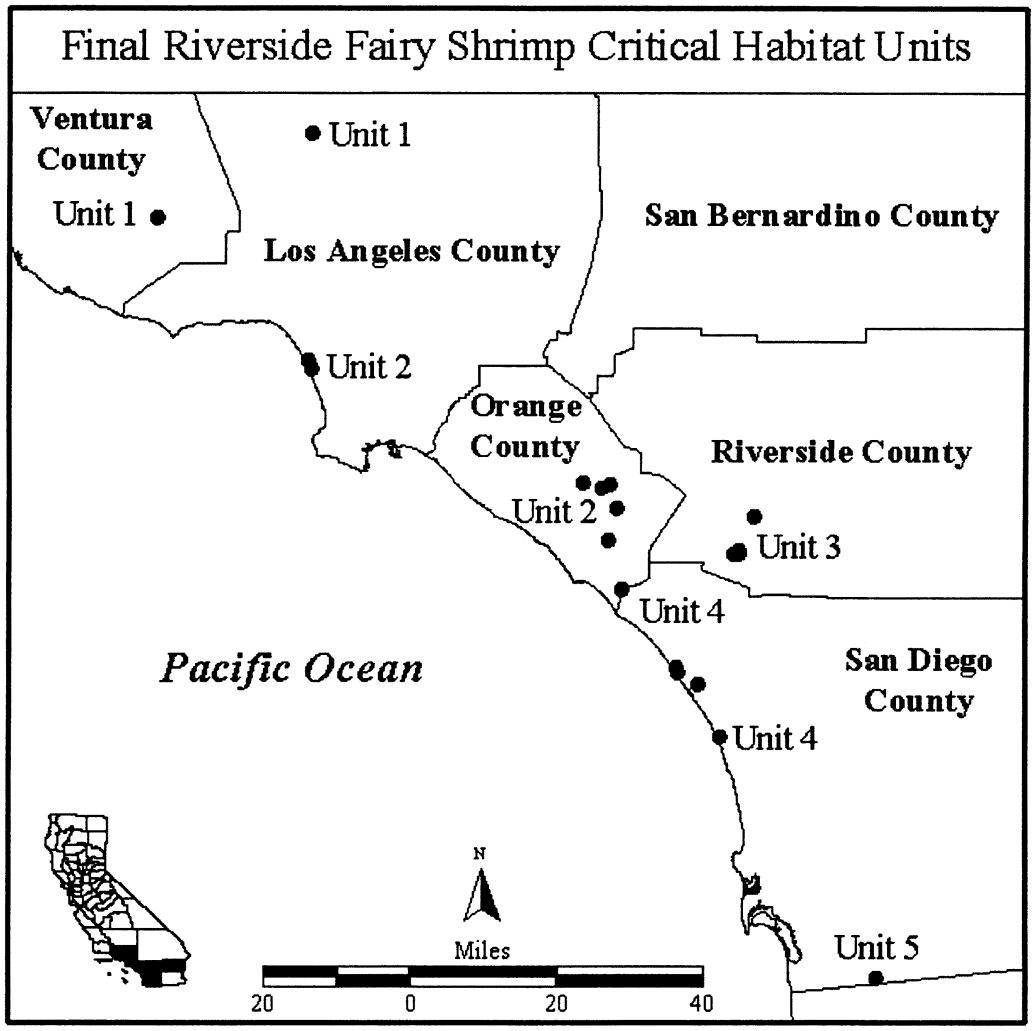
2. Critical habitat includes vernal pools, vernal pool complexes, and ephemeral ponds and depressions and their associated watersheds and hydrologic regime indicated on the maps below and in the legal descriptions.

3. Within these areas, the primary constituent elements for the Riverside fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support vernal pools or other ephemeral ponds and depressions, and their associated watersheds. The primary constituent elements are: small to large pools with moderate to deep depths that hold water for sufficient lengths of time necessary for incubation and reproduction, but not necessarily every year; entire watershed(s) and other hydrologic features that support pool basins and their related pool complexes; flat or gently sloping topography; and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat. All designated critical habitat areas contain one or more of the primary constituent elements for Riverside fairy shrimp.

4. Existing features and structures, such as buildings, roads, railroads, urban development, and other such developed features not containing primary constituent elements, are not considered critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

Note: Map follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

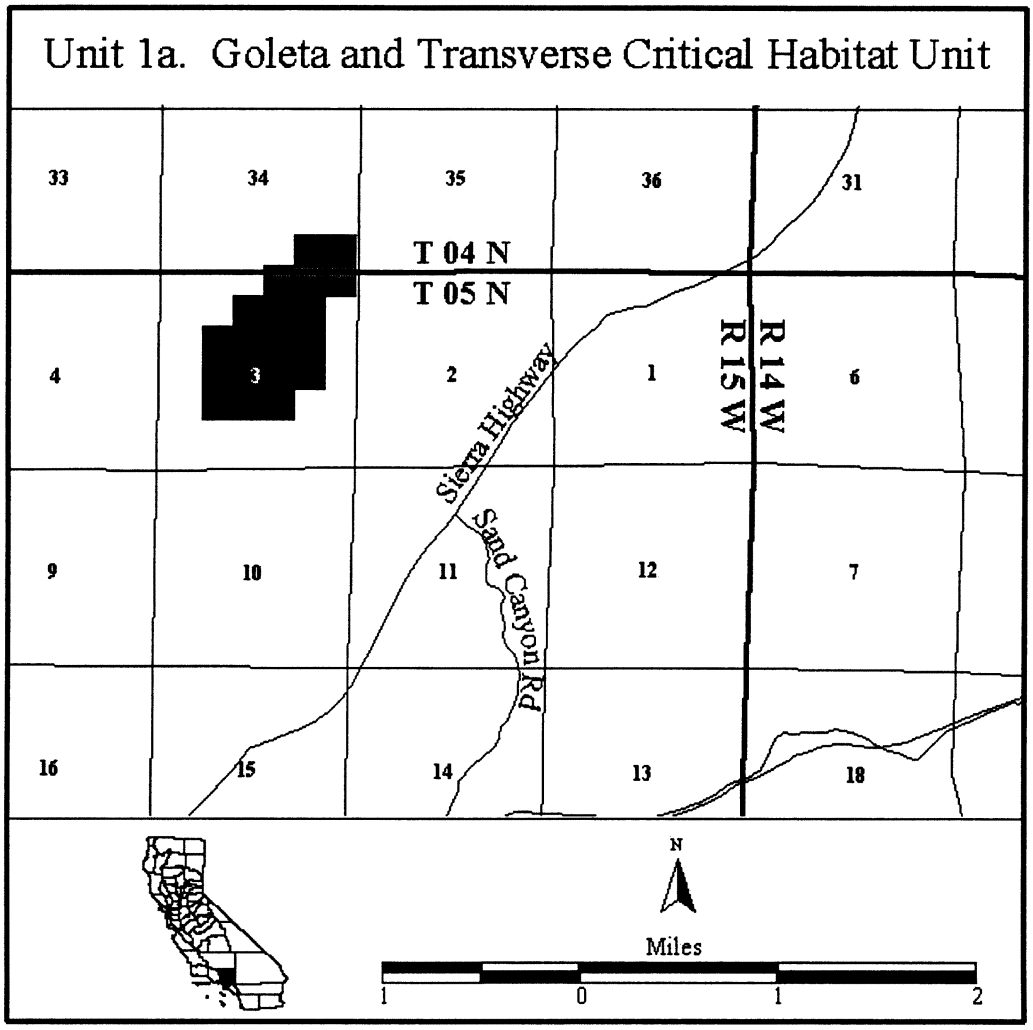
Map Unit 1: Goleta and Transverse Management Area, Ventura and Los Angeles counties, California

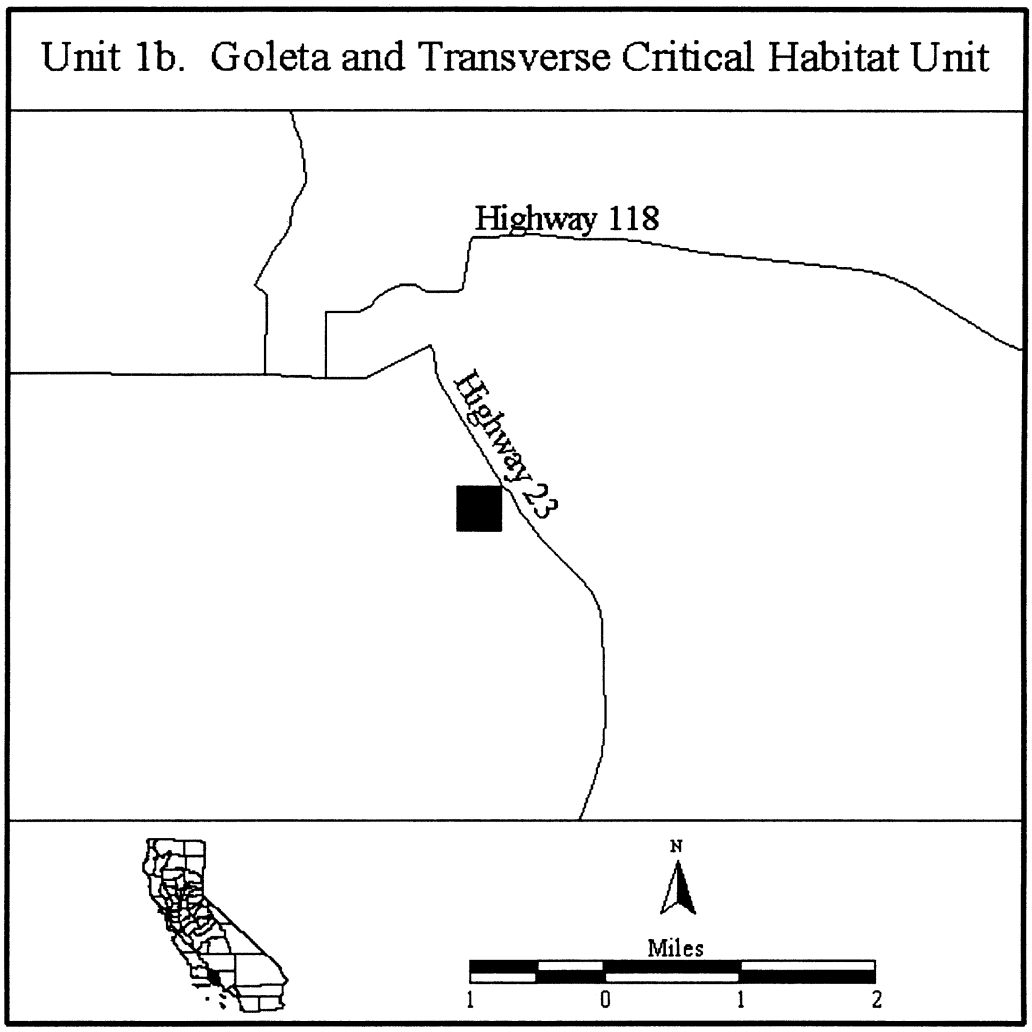
Unit 1a: From USGS 1:24,000 quadrangle map Mint Canyon, the lands bounded by the following UTM coordinates (E,N): 368000,3815000; 368500,3815000; 368500,3814500; 368250,3814500; 368250,3813750; 368000,3813750; 368000,3813500; 367250,3813500; 367250,3814250; 367500,3814250; 367500,3814500; 367750,3814500; 367750,3814750; 368000,3814750; 368000,3815000.

Unit 1b: From USGS 1:24,000 quadrangle map Simi Valley West, the lands bounded by the following UTM coordinates (E,N): 329000,3793250: 329500,3793250; 329500,3792750; 329000,3792750; 329000,3793250.

Note: Maps follow:

BILLING CODE 4310–55–U


Unit 1a. Goleta and Transverse Critical Habitat Unit
33
34
35
36
31
T 04 N
T 05 N
4
3
2
1
6
R 14 W
R 15 W
Sierra Highway
Sand Canyon Rd
9
10
11
12
7
16
15
14
13
18
N
Miles
1
0
1
2



BILLING CODE 4310–55–C

Map Unit 2: Los Angeles Basin-Orange Management Area, Los Angeles and Orange counties, California

Unit 2A: From USGS 1:24,000 quadrangle map Venice, the lands bounded by the following UTM coordinates (E,N): 366750,3757750; 367250,3757750; 367250,3757250; 367500,3757250; 367500,3756250; 367250,3756250; 367250,3756500; 367000,3756500; 367000,3757250; 366750,3757250; 366750,3757750.

Unit 2B: From USGS 1:24,000 quadrangle map Venice, the lands bounded by the following UTM coordinates (E,N): 367750,3755500; 368000,3755500; 368000,3755250; 367750,3755250; 367750, 3755500.

Unit 2C: From USGS 1:24,000 quadrangle map El Toro, the lands bounded by the following UTM coordinates (E,N): 435750,3726750; 436750,3726750; 436750,3726500; 436500,3726500; 436500,3726250; 435750,3726250; 435750,3726750.

Unit 2D: From USGS 1:24,000 quadrangle map El Toro, the lands bounded by the following UTM coordinates (E,N): 440500,3725750; 441000,3725750; 441000,3725000; 440500,3725000; 440500,3725750.

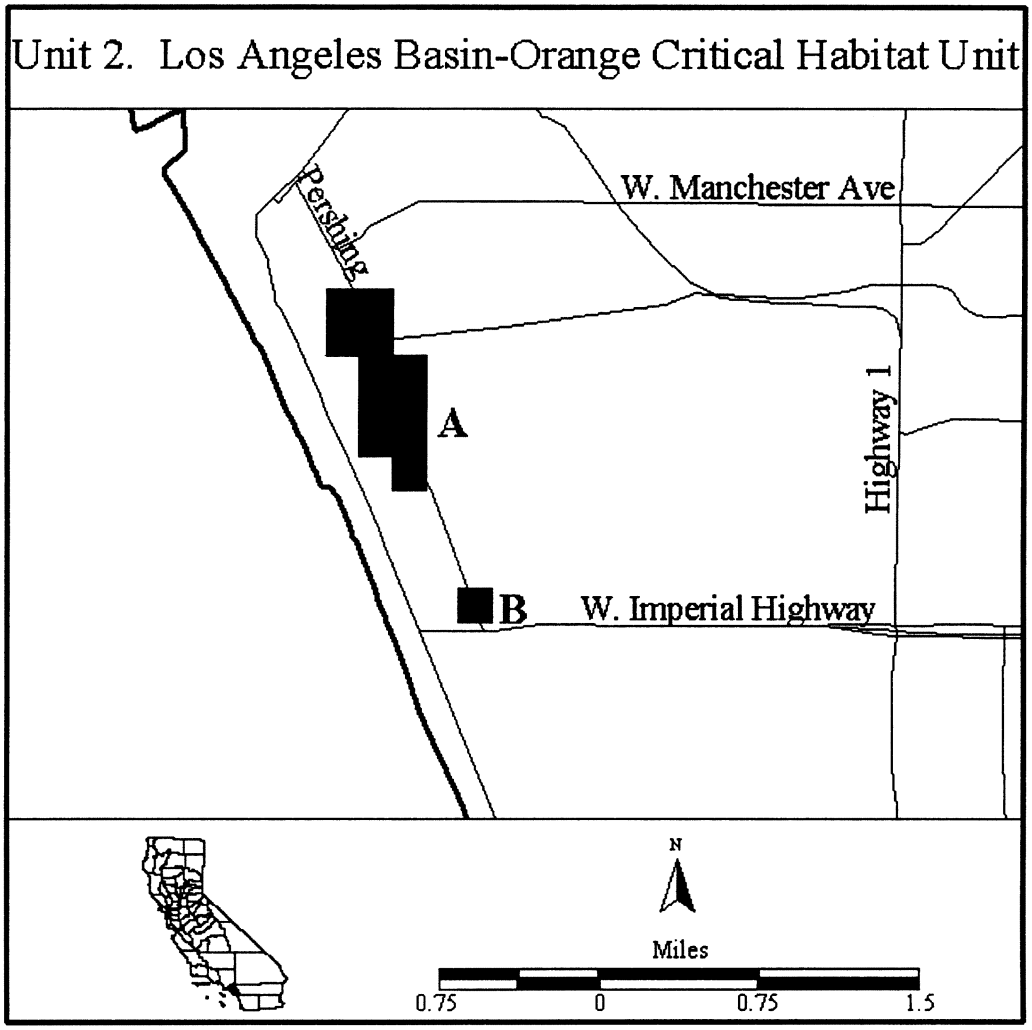
Unit 2E: From USGS 1:24,000 quadrangle map Santiago Peak, the lands bounded by the following UTM coordinates (E,N): 442500,3727000; 443750,3727000; 443750,3726000; 442250,3726000; 442250,3726500; 442500,3726500; 442500,3727000.

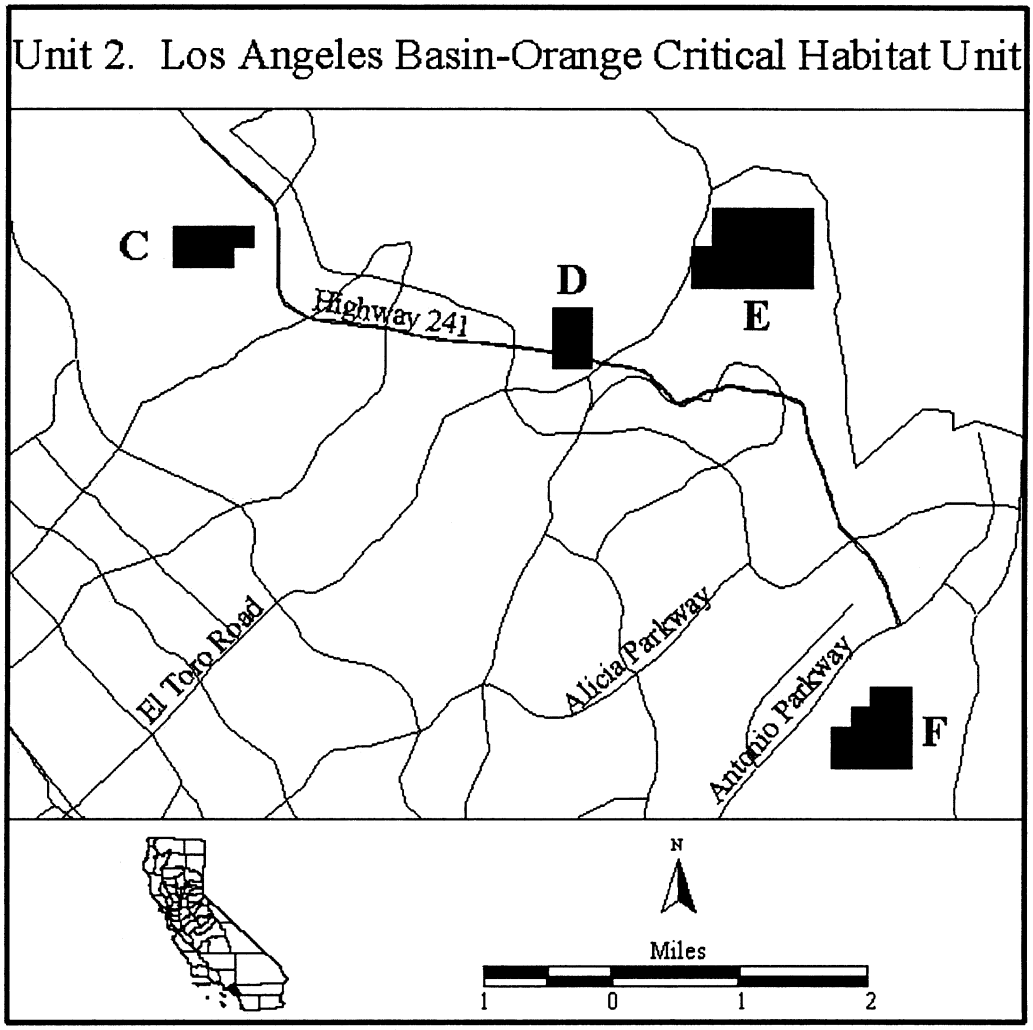
Unit 2F: From USGS 1:24,000 quadrangle maps Santiago Peak and Canada Gobernadora, the lands bounded by the following UTM coordinates (E,N): 444500,3721000; 445000,3721000; 445000,3720000; 444000,3720000; 444000,3720500; 444250,3720500; 444250,3720750; 444500,3720750; 444500,3721000.

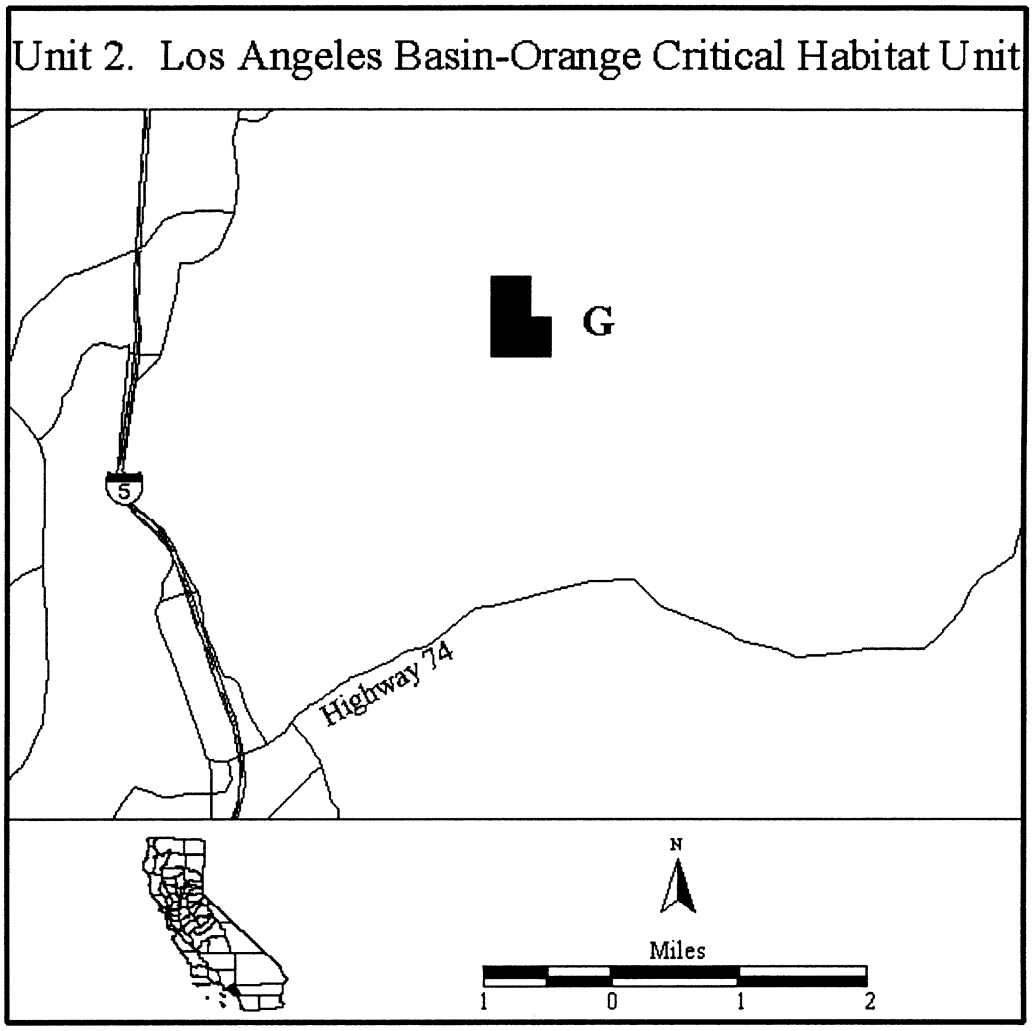
Unit 2G: From USGS 1:24,000 quadrangle map Canada Gobernadora, the lands bounded by the following UTM coordinates (E,N): 442000,3713000; 442500,3713000; 442500,3712500; 442750,3712500; 442750,3712000; 442000,3712000; 442000,3713000.

Note: Maps for Units 2A through 2G follow:

BILLING CODE 4310–55–U




Unit 2. Los Angeles Basin-Orange Critical Habitat Unit
C
D
E
F
Highway 241
El Toro Road
Alicia Parkway
Antonio Parkway
N
Miles
1 0 1 2


Unit 2. Los Angeles Basin-Orange Critical Habitat Unit
G
5
Highway 74
N
Miles
1
0
1
2

BILLING CODE 4310–55–C

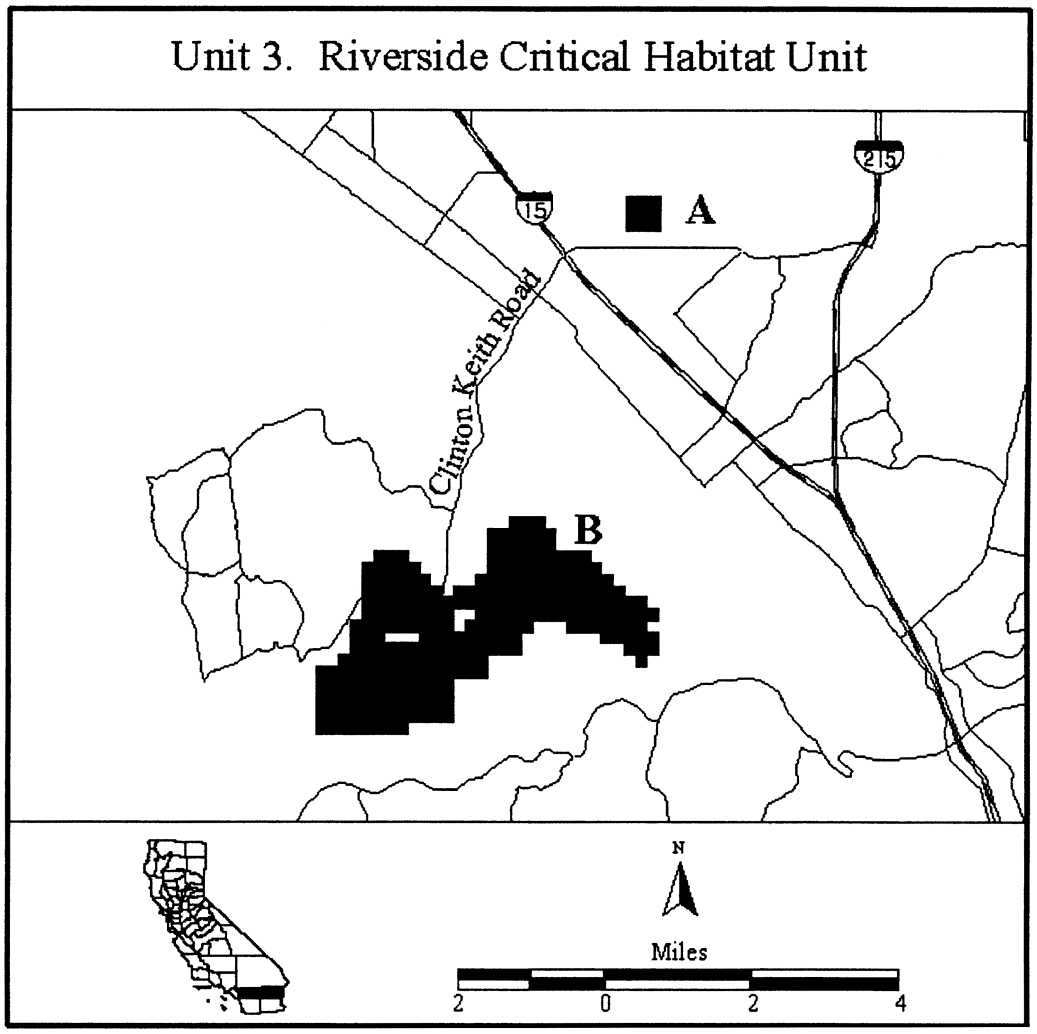
Map Unit 3: Riverside Management Area, Riverside County, California

Unit 3A: From USGS 1:24,000 quadrangle map Murrieta, the lands bounded by the following UTM coordinates (E,N): 478750,3718500; 479500,3718500; 479500,3717750; 478750,3717750; 478750,3718500.

Unit 3B: From USGS 1:24,000 quadrangle maps Wildomar and Murrieta, the lands bounded by the following UTM coordinates (E,N): 476250,3711500; 477000,3711500; 477000,3711250; 477250,3711250; 477250,3710750; 478000,3710750; 478000,3710500; 478250,3710500; 478250,3710250; 478500,3710250; 478500,3710000; 478750,3710000; 478750,3709750; 479250,3709750; 479250,3709500; 479500,3709500; 479500,3709250; 479250,3709250; 479250,3709000; 479500,3709000; 479500,3708500; 479250,3708500; 479250,3708250; 479000,3708250; 479000,3708500; 478750,3708500; 478750,3708750; 478250,3708750; 478250,3709000; 477500,3709000; 477500,3709250; 476750,3709250; 476750,3709000; 476500,3709000; 476500,3708500; 475750,3708500; 475750,3708000; 475000,3708000; 475000,3707000; 474000,3707000; 474000,3706750; 472000,3706750; 472000,3708250; 472500,3708250; 472500,3708500; 472750,3708500; 472750,3709250; 473000,3709250; 473000,3710500; 473250,3710500; 473250,3710750; 474000,3710750; 474000,3710500; 474250,3710500; 474250,3710250; 474500,3710250; 474500,3710000; 474750,3710000; 474750,3709750; 475000,3709750; 475000,3710000; 475500,3710000; 475500,3710250; 475750,3710250; 475750,3711250; 476250,3711250; 476250,3711500. Excluding lands bounded by the following UTM coordinates (E,N): 475000,3709500; 475000,3709000; 475250,3709000; 475250,3709250; 475500,3709250; 475500,3709500; 475000,3709500 and lands bounded by the following UTM coordinates (E,N): 473500,3709000; 473500,3708750; 474250,3708750; 474250,3709000; 473500,3709000.

BILLING CODE 4310–55–U

Note: Map follows:



BILLING CODE 4310–55–C

Map Unit 4: San Diego: North Coastal Mesa Management Area, San Diego, California

Unit 4A: From USGS 1:24,000 quadrangle map San Clemente, the lands bounded by the following UTM coordinates (E,N): 446250,3701000; 446500,3701000; 446500,3699500; 445750,3699500; 445750,3700000; 446000,3700000; 446000,3700750; 446250,3700750; 446250,3701000.

Unit 4B: From USGS 1:24,000 quadrangle map Las Pulgas Canyon, the lands bounded by the following UTM coordinates (E,N): 446250,3701000; 446500,3701000; 446500,3699500; 445750,3699500; 445750, 3700000; 446000,3700000; 446000,3700750; 446250,3700750; 446250,3701000, excluding the Pacific Ocean.

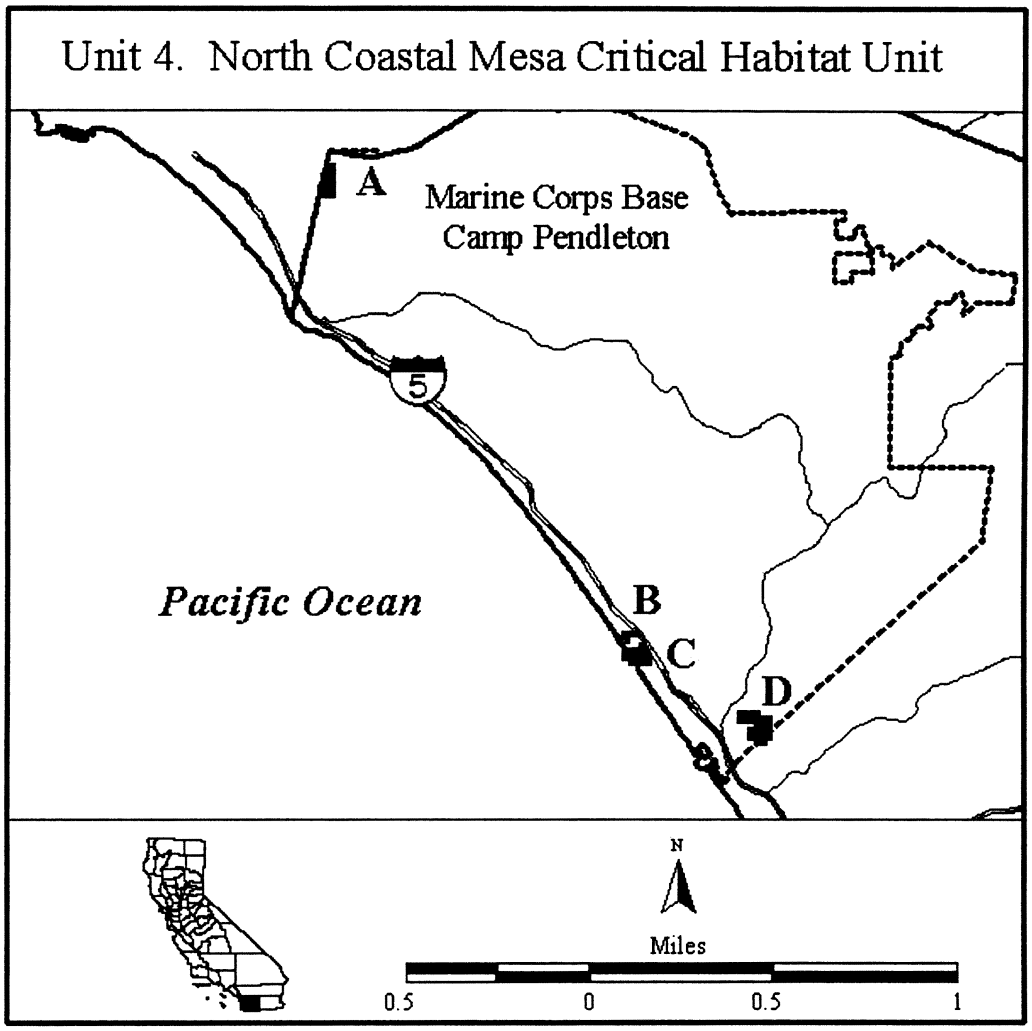
Unit 4C: From USGS 1:24,000 quadrangle map Las Pulgas Canyon, the lands bounded by the following UTM coordinates (E,N): 460000,3680000; 460250,3680000; 460250,3679750; 460500,3679750; 460500,3679000; 459500,3679000; 459500,3679250; 459250,3679250; 459250,3679750; 460000,3679750; 460000,3680000, excluding the Pacific Ocean.

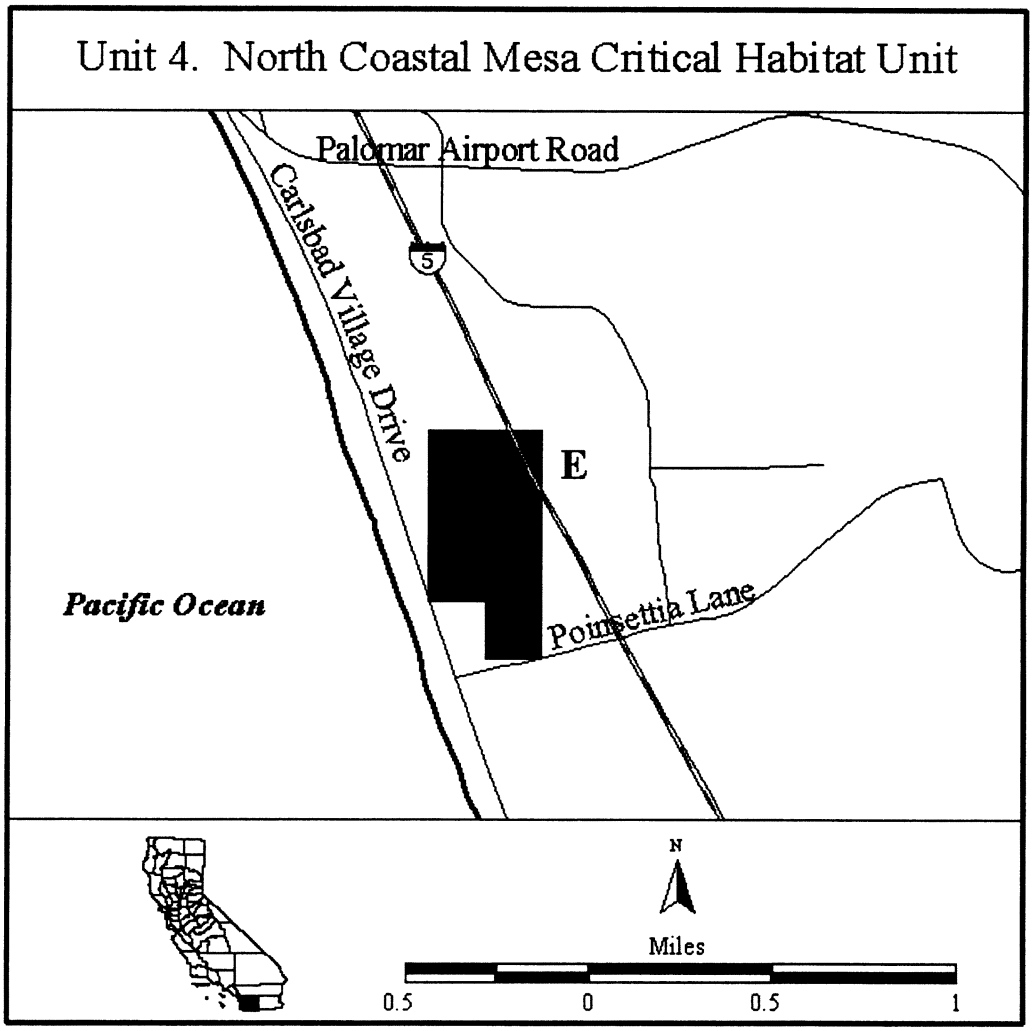
Unit 4D: From USGS 1:24,000 quadrangle maps Oceanside and San Luis Rey, the lands bounded by the following UTM coordinates (E,N): 464250,3677000; 465250,3677000; 465250,3676750; 465750,3676750; 465750,3675750; 465500,3675750; 465500,3675500; 465000,3675500; 465000,3675750; 464750,3675750; 464750,3676250; 465000,3676250; 465000,3676500; 464250,3676500; 464250,3677000.

Unit 4E: From USGS 1:24,000 quadrangle maps Encinitas, the lands bounded by the following UTM coordinates (E,N): 470250,3663500; 470750,3663500; 470750,3662500; 470500,3662500; 470500,3662750; 470250,3662750; 470250,3663500.

Note: Maps for Units 4A through 4E follow:

BILLING CODE 4310–55–U

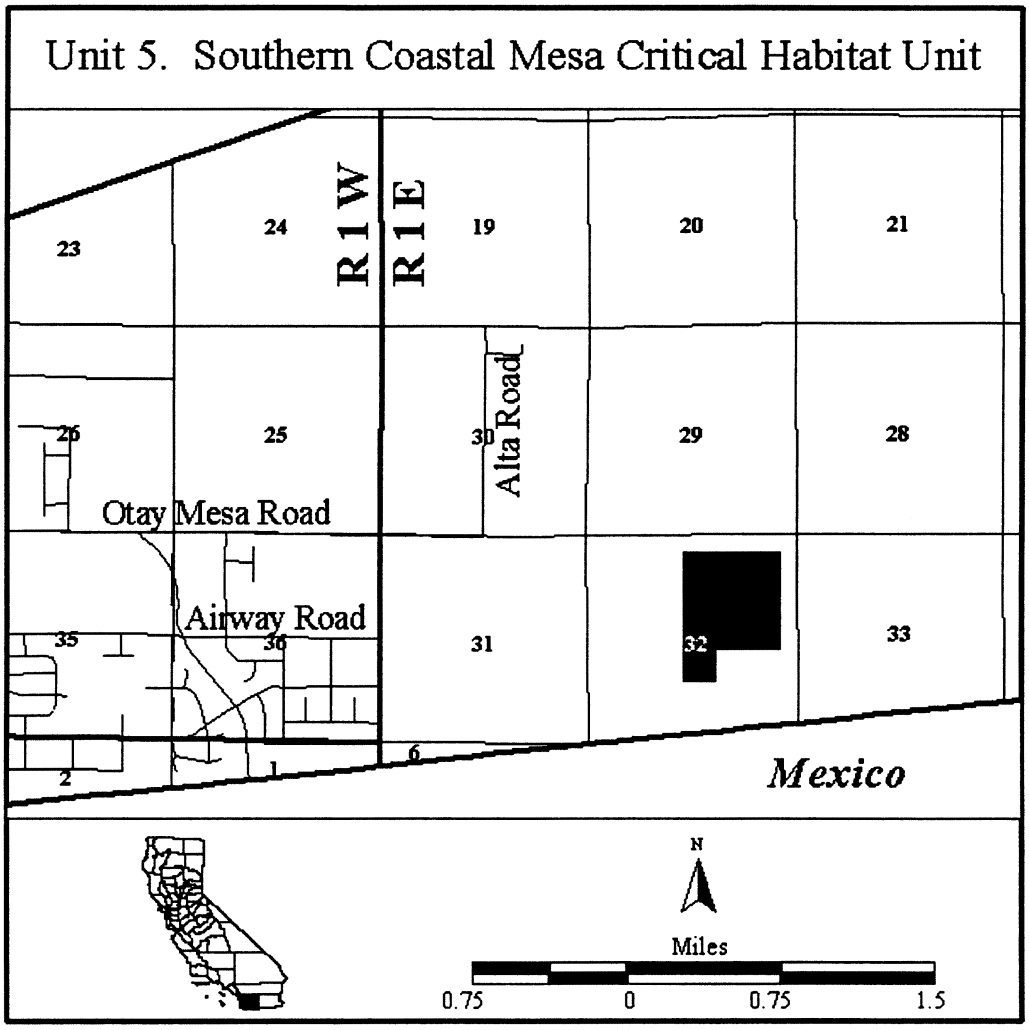




BILLING CODE 4310–55–C

Map Unit 5: San Diego: South Coastal Management Area, San Diego County, California. From USGS 1:24,000 quadrangle maps Otay Mesa, the lands bounded by the following UTM coordinates (E,N): 509250,3603000; 510000,3603000; 510000,3602250; 509500,3602250; 509500,3602000; 509250,3602000; 509250,3603000.

Note: Map follows:



Dated: May 22, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–13337 Filed 5–23–01; 4:03 pm]

BILLING CODE 4310–55–C

Federal Register

Wednesday,
May 30, 2001

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 11 et al.
Type Certification Procedures for Changed Products; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, and 25

[Docket No. FAA–2001–8994 (Formerly Docket No. 28903); Amdt. No. 11–45, 21–77, 25–99]

RIN 2120–AF68

Type Certification Procedures for Changed Products

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on final rule.

SUMMARY: This document is a summary and disposition of comments received on a final rule published by the FAA on June 7, 2000. That final rule amended the procedural regulations for the certification of changes to type certificated products. These amendments affect changes accomplished through either an amended type certificate or a supplemental type certificate.

ADDRESSES: In order to give the public greater access to docketed information, the FAA Rules Docket has moved this docket file to the Department of Transportation's electronic Docket Management System (DMS) and assigned a new docket number to this project, Docket No. FAA–2001–8994; previously Docket No. 28903.

The complete docket file may be examined electronically through the DMS via the Internet at http://dms.dot.gov. See access instructions in section ''Availability of Rulemaking Documents.'' You may also review the public docket in person by visiting the public access room at the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Office is open between 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randall Petersen, Certification Procedures Branch (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9583.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you which to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www/faa/gov/avr/armhome.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Background

On June 7, 2000, the FAA published a final rule titled ''Type Certification Procedures for Changed Products'' (65 FR 36244). That final rule amended the procedural regulations for the certification of changes to type certificated products, accomplished through either an amended type certificate or a supplemental type certificate. The rule requires that major changes to transport category airplanes and restricted category airplanes that have been type certificated using transport category standards, be evaluated under the new rules beginning December 10, 2001 (18 months from the date of publication of June 7, 2000). Major changes to all other category aircraft and engines and propellers are required to be evaluated under the new rules beginning December 9, 2002 (30 months from the date of publication of June 7, 2000).

In the NPRM, the FAA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. In the final rule, the FAA revisited the question of the potential impact on small entities and determined that an analysis under the regulatory flexibility Act of 1980, as amended, was required. Also noted in the final rule was the FAA determination that implementation of the rules would pose increased information collection requirements. The final rule contained a Regulatory Flexibility Analysis and an information collection review as required by the Paperwork Reduction Act. The FAA requested public comments on the Regulatory Flexibility Analysis and the information collection requirements.

This document addresses comments received on the above final rule.

Discussion of Comments

The FAA received 12 comments. The comments were from individuals, manufacturers, repair stations, and associations. We thank the industry for taking the time to respond to our request for comments.

Several commenters state that the FAA had not complied with the Small Business Regulatory Enforcement Fairness Act (SBREFA). The FAA does not agree. The regulatory flexibility analysis did discuss the impact on small entities and we briefed the Small Business Administration on the rule, to its apparent satisfaction.

One commenter suggested that the cost of compliance would exceed $15,000 dollars per Supplemental Type Certificate application, compared with the numbers used in the regulatory flexibility analysis. Another commenter raised similar concerns suggesting the compliance cost estimate of $3,198 dollars was reasonably low. The FAA compliance costs were developed through use of statistical analysis and, therefore, are an estimate of average costs. The FAA recognizes that some projects may exceed the estimated average, but believes the averages are the result of a valid statistical analysis. Because the commenters did not supply data to support the $15,000 dollar estimate, nor any other estimate, we are neither modifying our analysis nor the rule.

Two commenters are concerned that costs will increase because the certification basis cannot absolutely be determined until final FAA review. They state that limitations on FAA resources will cause extensive delays and increased costs. The FAA discussion of costs and benefits in the final rule acknowledges that there may be some additional administrative and compliance costs. Those costs were considered in the regulatory flexibility analysis.

One commenter states that the Paperwork Reduction Act burden is not justified. The commenter submitted no data to support a change in the information collection analysis and no change has been made.

Changes have not been made to the rule as a result of consideration of these comments. Many other comments addressed issues beyond the scope requested and these were not considered, except as described below.

The FAA understands the industry concerns with the implementation of this rule and the certification process. On August 22, 2000, we published in the **Federal Register** (65 FR 51052) a Notice of Availability and Request for Comments on the associated guidance material, Proposed Advisory Circular (AC) No. 21.101–XX. Comments to this rule and the AC were valuable and assisted the FAA in clarifying the new

certification process. When issued, the advisory circular will be harmonized with guidance issued by the Joint Aviation Authorities (JAA) and Transport Canada. The final AC should be available in the near future.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendment Numbers 11–45, 21–77, and 25–99 remain in effect as adopted.

Issued in Washington, DC, on May 22, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–13307 Filed 5–29–01; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday,
May 30, 2001

Part IV

Department of Education

Privacy Act of 1974; System of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Student Financial Assistance, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education (ED) publishes this notice of a new system of records entitled ''Student Authentication Network Audit File (18–11–10).'' The system will contain information on individuals who have had, or attempted to have, their identity authenticated for the purpose of electronically completing and signing promissory notes and other documents under the Student Financial Assistance Programs authorized by Title IV of the Higher Education Act of 1965, as amended. The information maintained by the system includes the individual's name, Social Security Number, date of birth, and system-generated identifiers. The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed routine uses for this system of records included in this notice on or before June 29, 2001. The Department filed a report describing the new system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform and Oversight of the House, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 24, 2001. This new system of records will become effective at the later date of: (1) The expiration of the 30-day period for OMB review on June 23, 2001, unless OMB gives specific notice within the 30 days that the system is not approved for implementation or requests an additional 10 days for its review; or (2) June 29, 2001, unless the routine uses in the system of records need to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the routine uses in this system of records to Neil Sattler, Office of Chief Information Officer, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, room 604, Washington, DC 20202–5132. Telephone: (202) 205–4348. If you prefer to send comments through the Internet, use the following address: E__ID@ed.gov.

You must include the term ''Student Authentication System of Records'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 604, Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments on the Routine Uses in the System of Records

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Neil Sattler, Office of the Chief Information Officer, U.S. Department of Education, Student Financial Assistance, 400 Maryland Avenue, SW., Portals Building, room 604, Washington, DC 20202–5132. Telephone: (202) 205–4348. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records managed by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about individuals that contain individually identifiable information and that may be retrieved by a unique identifier associated with each individual, such as a name or Social Security Number. The information about each individual is called a ''record'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new system of records.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: http://www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http:// www.access.gpo.gov/nara/index.html.

Dated: May 24, 2001.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

For the reasons discussed in the preamble, the Chief Operating Officer, Student Financial Assistance, U.S. Department of Education publishes notice of a new system of records to read as follows:

18–11–10

SYSTEM NAME:

Student Authentication Network Audit File.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Student Authentication Network Audit File is located at NCS Pearson, 2510 North Dodge Street, Iowa City, Iowa 52245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records (i.e., an audit file) on individuals who have had, or attempted to have, their identity verified for the purpose of electronically completing and signing promissory notes and other documents in connection with applying for or obtaining aid, or carrying out other activities under the Student Financial Assistance Programs authorized by Title IV of the Higher Education Act of 1965, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records including an individual's Social Security Number; date of birth; first and last names; user code (i.e., the Department, lenders, schools, guarantee agencies and holders of Federal student loans) identifying the entity seeking to verify the individual's identity; data provided by the user that may subsequently be used for auditing or other internal purposes of the user); an action code documenting the ''affirmed'' or ''denied'' verification response the system receives from the Department's Personal Identification Number (PIN) database; a unique identifier comprising a system-generated sequence number; and, the date and time the individual's identity is authenticated against the Department's PIN database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Higher Education Act of 1965, as amended, (20 U.S.C. 1092b).

PURPOSE(S):

The information contained in the records maintained in this system is used for the purposes of verifying the identity of the individual, enforcing the conditions and terms of the loan, permitting the servicing and collecting of the loan, investigating possible fraud and verifying compliance with program regulations, initiating legal action against an individual involved in program fraud, abuse, or noncompliance, and enforcing Title IV requirements against schools, lenders, and guaranty agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Program Disclosures.* The Department may disclose information from this system to Federal, State, or local agencies, private parties such as relatives, present and former employers and creditors, business and personal associates, guaranty agencies, educational and financial agencies or institutions, contractors and hearing officials for the following purposes:

(a) To verify the identity of the individual;

(b) To enforce the conditions or terms of the loan;

(c) To permit servicing, collecting, or accepting the loan;

(d) To investigate possible fraud and verify compliance with program regulations;

(e) To prepare for litigation or to litigate collection service and audit;

(f) To initiate a limitation, suspension, and termination (LS&T) or debarment or suspension action;

(g) To ensure Title IV requirements are met by schools, lenders, and guaranty agencies; and

(h) To investigate complaints, update files, and correct errors.

(2) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of

records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(7) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(8) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(9) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(11) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(12) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

The records are maintained on magnetic tape or other electronic media.

RETRIEVABILITY:

Records are retrievable by Social Security Number and all or part of an individual's last name.

SAFEGUARDS:

Physical access to the data systems housed within the facility is controlled by a computerized badge reading system, and the entire complex is patrolled by security personnel during non-business hours. The computer systems offer a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained within the computer system control program. This security system limits data access to Department and contract staff on a ''need-to-know'' basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification (ID) with personal identifiers. All interactions by individual users with the system are recorded.

RETENTION AND DISPOSAL:

The Department will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 20, Item 1.c. This schedule provides disposal authorization for electronic files and hard-copy printouts created to monitor system usage, including, but not limited to log-in files, audit trail files, system usage files, and cost-back files used to assess charges for system use. Records will be deleted or destroyed when the Department determines they are no longer needed for administrative, legal, audit, or other program purposes.

SYSTEM MANAGER(S) AND ADDRESS:

General Manager, Students Channel, Student Financial Assistance, Department of Education, 7th and D Streets, SW., Washington, DC, 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, provide the system manager with your name, date of birth and Social Security Number. Requests must meet the requirements of the regulations at 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, contact the system manager and provide information as described in the notification procedure. Requests by an individual for access to a record must meet the requirements of the regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager with the information described in the notification procedure, identify the specific items you are contesting, and provide a written justification for each item. Requests to amend a record must meet the requirements of the regulations at 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who have had or seek to have their identity authenticated, except that user codes and user-provided data are obtained specifically from the entity (the Department, lenders, schools, guarantee agencies and holders of Federal student loans) that seeks to verify the individual's identity.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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Wednesday,
May 30, 2001

Part V

Department of Education

Community Technology Centers Program Grant; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.341A]

Community Technology Centers Program Grant; Notice Inviting Project Applications for One-Year Awards for Fiscal Year (FY) 2001

Note to Applicants: This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition. These grants are authorized by Title III, section 3122 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's Schools Act of 1994 (20 U.S.C. 6832).

Purpose of Program: The purpose of the Community Technology Centers program is to promote the use of technology in education through the development of model programs that demonstrate the educational effectiveness of technology in low-income or economically-distressed urban and rural communities.

Eligible Applicants: State and local educational agencies, tribal governments, colleges, institutions of higher education, libraries, museums and other public and private nonprofit or for-profit agencies and organizations are eligible to receive grants under this program. A group of eligible entities is also eligible to receive a grant if the group follows the procedures for group applications in 34 CFR 75.127–129 of EDGAR.

Deadline for Transmittal of Applications: July 16, 2001.

Deadline for Intergovernmental Review: August 28, 2001.

Estimated Available Funds: $32,275,750.

Cost Share Requirement: Recipients of the one-year grants under the program must share in the cost of the activities assisted under the grant. Grant recipients must make available non-Federal contributions in cash or in kind, as authorized under section 3122(d) of ESEA, of 30 percent of the cost of activities assisted under the grant.

Estimated Range of Awards: $75,000—$300,000.

Estimated Average Size of Awards: $180,000.

Estimated Number of Awards: 170 to 190.

Project Period: Not to exceed 12 months.

Note: The Department of Education is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

SUPPLEMENTARY INFORMATION: A recent GAO report (Telecommunications: Characteristics and Choices Of Internet Users, February, 2001) and a series of U.S. Department of Commerce studies (Falling Through the Net, 1995, 1999, 2000) on Americans' access and use of technology show that although more Americans now own computers, minority and low-income households in inner cities and rural communities are still far less likely to have computers or online access to the Internet and know how to use advanced technology than users of more affluent households. Although the numbers of Americans who have access to computers and know how to use the Internet are increasing, the recent reports show that the ''digital divide'' persists for low-income, minorities and non-English speaking children and adults. In response, community technology centers have been established to enhance educational and employment opportunities by making computers and informational technology more accessible and to provide related learning services to children and adults in low-income, urban and rural communities.

Description of Program

The Community Technology Centers program for fiscal year 2001 provides support for access to computers and technology and technology-based educational learning activities for adults and children in low-income communities who otherwise would lack that access to computers and informational technology. The program is authorized under section 3122 of ESEA. Under section 3122, the Secretary may carry out a variety of activities that promote the use of technology in education. These activities include the development of model programs, such as community technology centers, that demonstrate the educational effectiveness of technology in urban and rural areas and economically distressed communities. Under the Community Technology Centers program, the Secretary will award one-year grants to establish or expand community technology centers to provide technology-based learning services for individuals in economically distressed urban and rural communities.

Applicants under this program are encouraged to provide educational services and programming activities around access to and use of computers and information technology for local community residents, in areas such as:

1. *Adult Education and Family Literacy,* including GED, English language instruction, and adult basic education classes or programs, introduction to computers, intergenerational activities, and lifelong learning opportunities through technology and the Internet.

2. *After-school Activities* for children of all ages to use software that provides homework help and academic enrichment, exploration of the Internet, and multimedia activities, including web page design and creation.

3. *Career Development and Job Preparation,* such as computer skills training (basic and advanced), resume writing workshops, and access to databases of employment opportunities, career information, and other online materials.

4. *Small Business Activities,* such as computer-based training for basic entrepreneurial skills and electronic commerce, as well as access to information on business start-up programs.

Although a single eligible applicant may apply for a grant, the Secretary encourages applications from partnerships that include local community organizations or agencies. As indicated in the discussion of cost sharing above, recipients of the one-year grants must share in the cost of activities assisted under the grants through non-Federal contributions. The non-Federal share of activities may be in the form of cash or in-kind contributions, fairly valued.

Invitational Priorities

The Secretary is particularly interested in applications that address one or all of the invitational priorities in the next two paragraphs. (34 CFR 75.105(c)(1))

Invitational Priority 1—Projects that demonstrate substantial community support of, and commitment to, the community technology access center or centers with evidence of community assets that the applicant has leveraged or plans to leverage.

Invitational Priority 2—Projects that exemplify effective strategies in overcoming participant retention barriers (such as special needs, language proficiency, childcare needs and staff development) and best practices for instructing with technology (such as computer instruction related to school or work activities, encourages collaboration and develops complex thinking skills) to improve educational

and employment outcomes for low–income youth and adults.

Invitational Priority 3—Projects that use the program funds to operate a community technology access center or centers in an Empowerment Zone, including a Supplemental Empowerment Zone, in an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, or in an economically-distressed rural community.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published at *http://www5.hud.gov/urban/tour/statestour.asp.*

Definition:

In addition to definitions in the statute and EDGAR, the following definition applies:

Economically distressed means a county or equivalent division of local government of a State in which, according to the most recent available data from the United States Bureau of the Census, a significant percentage of the residents have an annual income that is at or below the poverty level.

Selection Criteria

(1) The Secretary uses the following selection criteria to evaluate applications for grants under this competition. In all instances where the word ''project'' appears in the selection criteria, the reference to a community technology center should be made.

(2) The maximum composite score for all of these criteria is 105 points.

(3) The maximum score for each criterion and factor is indicated in parentheses.

(a) *Meeting the purposes of the authorizing statute.* (10 points) The Secretary considers how well the project meets the purposes of section 3122(a) and (c)(10) of ESEA by developing a model project that demonstrates the educational effectiveness of technology and expands access to information technology and related services in an economically distressed urban or rural community.

(b) *Need for project.* (30 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (15 points)

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (15 points)

(c) *Quality of project design.* (20 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(ii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (10 points)

(d) *Quality of project personnel.* (10 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of the project director or principal investigator.

(e) *Quality of the management plan.* (10 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5 points)

(ii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (5 points)

(f) *Adequacy of resources.* (15 points) (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (5 points)

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (5 points)

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (5 points)

(g) *Quality of project evaluation.* (10 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Note: In accordance with EDGAR 34 CFR 75.590, 80.40, and 80.50. Grant recipients must submit a final performance report as a condition of the grant that provides the most current performance and financial expenditure information on project activities, including the recipient's progress in achieving the objectives in its approved application.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the SPOC for each of those States and follow the procedures established in each State under the Executive order. If you want to know

the name and address of any SPOC, you may view the latest SPOC list on the OMB Web site at the following address: *http://www.whitehouse.gov/omb/grants/spoc/html*.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.341A, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Note: Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Community Technology Centers Program, CFDA 84.341A, is one of the programs included in the pilot project. If you are an applicant under the Community Technology Centers Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Community Technology Centers Program at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) elsewhere in this notice.

Transmittal of Applications

If an applicant wants to apply for a grant, the applicant must—

(a) If You Submit Your Application Electronically:

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date. The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday–Friday and 6:00 a.m. until 7:00 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time). If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

(b) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.341A, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service post mark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered post mark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(c) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.341A, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised November 12, 1999) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Parity Guidelines Between Paper & Electronic Applications:

The Department of Education is expanding the pilot project, which began in FY 2000, that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-APPLICATION visit the following address: *http://e-grants.ed.gov.*

In an effort to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-APPLICATION has an impact on all applicants under this competition.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project is another step in the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department is conducting a limited pilot of electronic peer review (e-READER) and electronic annual performance reporting (e-REPORTS). To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

Note: An applicant who is submitting a paper copy of their application may submit information on photostatic copies of the application, budget forms, assurances, and certifications as printed in this notice in the **Federal Register**. However, the application form, assurances, and certifications must each have an original signature. Applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application, one bound and one unbound copy suitable for photocopying. Please mark each application as ''original'' or ''copy''. To aid with the review of applications, the Department encourages applicants to submit two additional paper copies of the application. The Department will not penalize applicants who do not provide additional copies. No grant may be awarded unless a completed application form, including the signed assurances and certifications, has been received. (For applicants who submit electronically, see separate instructions under ''Instructions for Transmittal of Applications'' above.)

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances and certifications, and a checklist for applicants.

a. Instructions for the Application Narrative.

b. Estimated Public Reporting Burden Statement.

c. Notice to All Applicants (compliance with section 427 of GEPA).

d. Checklist for Applicants.

e. Application for Federal Assistance (ED 424, Exp. 06/30/2001) and instructions.

f. Budget Information-Non-construction Programs (ED Form No. 524) and instructions.

g. Assurances-Non-Construction Programs (Standard Form 424B) and instructions.

h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

i. Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

FOR FURTHER INFORMATION CONTACT: Mary LeGwin, 202/260–2499 or April Blunt, 202/690–5614, U.S. Department of Education, Community Technology Centers Program, Office of Vocational and Adult Education, 330 C Street, SW., Room 4414, Switzer Building, Washington, DC 20202–7240. E-mail: ctc@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Application Package Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or its E-mail address (*edpubs@inet.ed.gov*).

Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

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Program Authority: 20 U.S.C. 6832.

Dated: May 24, 2001.

Robert Muller,

Deputy Assistant Secretary for Vocational and Adult Education.

APPENDIX

Instructions for the Application Narrative

The narrative is the section of the application where the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 30 pages using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

1. Begin with a one-page Abstract summarizing the proposed community technology center project, including a short description of the population to be served by the project, project objectives, and planned project activities;

2. Include a table of contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

3. Describe how the applicant meets the invitational priority(ies), if applicable.

4. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

5. In the application budget, include a description of the non-federal contributions that the applicant will contribute to the project in amounts not less than the non-federal contribution as required in this notice. Budget line items must support the goals and objectives of the proposed project.

6. Provide the following in response to the attached ''Notice to all Applicants'': (1) a reference to the portion of the application in which information appears as to how the applicant is addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

7. When applying for funds as a consortium, individual eligible applicants must enter into an agreement signed by all members. The consortium's agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the consortium's application. The designated applicant must submit the consortium's agreement with its application.

8. Attach copies of all required assurances and forms.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is 1830–0539 (Expiration Date: 04/30/2002). The time required to complete this information collection is estimated to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: Mary LeGwin or April Blunt, Community Technology Centers Program, U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Community Technology Centers Program, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–7240.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance (ED 424).

2. Budget Information—Non-construction Programs (ED Form No. 524).

3. Application Narrative, including information that addresses section 427 of the General Education Provisions Act. (See the section entitled ''NOTICE TO ALL APPLICANTS'').

4. Assurances—Non-Construction Programs (SF 242B).

5. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

6. Disclosure of Lobbying Activities (Standard Form LLL)

7. Consortium agreement, if applicable.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

_____

_____ _____ _____ _____-_____

City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 84.341A ➡ Title: Community Technology Centers Program

5. Project Director:_____

Address:_____

_____ _____ _____-_____

City State ZIP Code + 4

Tel. #: ( ) _____-_____ Fax #: ( )_____-_____

E-Mail Address:_____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:_____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—*PreApplication*	—*Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
____/____/_____	____/____/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

OR

b. Assurance of Compliance #:

c. IRB approval date: _____

☐ Full IRB **or**

☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$_____	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. **Signature of Authorized Representative** Date:___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employeeof a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

[FR Doc. 01–13550 Filed 5–29–01; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Empresa Brasileira de Aeronautica, S.A.; published 5-15-01

COMMENTS DUE NEXT WEEK

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Magnuson-Stevens Act provisions—
  - Domestic fisheries; exempted fishing permits; comments due by 6-6-01; published 5-22-01
- Northeastern United States fisheries—
  - Atlantic deep-sea red crab; comments due by 6-7-01; published 5-8-01

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; withdrawn; comments due by 6-4-01; published 4-3-01
- Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 6-4-01; published 4-3-01

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- South Carolina; comments due by 6-6-01; published 5-7-01

Air quality implementation plans; approval and promulgation; various States:
- District of Columbia; comments due by 6-8-01; published 5-9-01
- Kentucky; comments due by 6-8-01; published 5-9-01
- Maryland; comments due by 6-6-01; published 5-7-01
- Pennsylvania; comments due by 6-4-01; published 5-3-01

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Tennessee; comments due by 6-4-01; published 5-3-01

Air quality planning purposes; designation of areas:
- Louisiana; comments due by 6-8-01; published 5-9-01

Hazardous waste:
- Project XL program; site-specific projects—
  - Yolo County Landfill, Davis, CA; comments due by 6-8-01; published 5-9-01

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Colorado; comments due by 6-4-01; published 5-1-01

Television stations; table of assignments:
- Texas; comments due by 6-4-01; published 5-1-01

FEDERAL DEPOSIT INSURANCE CORPORATION

Riegle-Neal Interstate Banking and Branching Efficiency Act; implementation:
- Interstate branches used primarily for deposit production; prohibition; comments due by 6-8-01; published 4-9-01

FEDERAL ELECTION COMMISSION

Independent expenditure reporting; comments due by 6-8-01; published 5-9-01

FEDERAL RESERVE SYSTEM

Riegle-Neal Interstate Banking and Branching Efficiency Act; implementation:
- Interstate branches used primarily for deposit production; prohibition; comments due by 6-8-01; published 4-9-01

FEDERAL TRADE COMMISSION

Hart-Scott-Rodino Antitrust Improvement Act:
- Premerger notification; reporting and waiting period requirements; comments due by 6-8-01; published 5-9-01

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; withdrawn; comments due by 6-4-01; published 4-3-01
- Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 6-4-01; published 4-3-01

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid:
- Physicians' referrals to health care entities with which they have financial relationships; comments due by 6-4-01; published 4-4-01

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Robust spineflower; correction; comments due by 6-4-01; published 5-3-01
  - Rock gnome lichen; comments due by 6-4-01; published 4-5-01
- Sacramento splittail; comments due by 6-7-01; published 5-8-01

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:
- Safety and Health (Short Form) clause; comments due by 6-4-01; published 4-5-01

Federal Acquisition Regulation (FAR):
- Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; withdrawn; comments due by 6-4-01; published 4-3-01
- Contractor responsibility, labor relations costs, and costs relating to legal and other proceedings; comments due by 6-4-01; published 4-3-01

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations, regattas and marine parades, and ports and waterways safety:
- Sail Detroit and Tall Ship Celebration, Detroit and Saginaw Rivers, MI; safety zones; comments due by 6-8-01; published 4-9-01

Ports and waterways safety:
- Muskegon Lake, MI; safety zone; comments due by 6-4-01; published 4-4-01

Regattas and marine parades:
- Chester River, Kent Island Narrows, MD; fireworks display; comments due by 6-4-01; published 4-5-01
- Seattle Seafair Unlimited Hydroplane Race; comments due by 6-5-01; published 4-6-01

TRANSPORTATION DEPARTMENT

Disadvantaged business enterprises participation in DOT financial assistance programs; memorandum of understanding with Small Business Administration, etc.; comments due by 6-7-01; published 5-8-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Airbus; comments due by 6-4-01; published 5-4-01
- Boeing; comments due by 6-4-01; published 4-19-01
- Dornier; comments due by 6-4-01; published 5-4-01
- Eurocopter France; comments due by 6-8-01; published 4-9-01

McDonnell Douglas; comments due by 6-4-01; published 4-19-01

Airworthiness standards:

Special conditions—

Ayres Corp. Model LM 200 airplane; comments due by 6-7-01; published 5-8-01

Bombardier Inc. Model CL-600-1A11 airplanes; comments due by 6-4-01; published 5-4-01

Lockheed-Georgia Model 1329-25, etc., airplanes; comments due by 6-4-01; published 5-4-01

Class E airspace; comments due by 6-4-01; published 5-4-01

Class E5 airspace; comments due by 6-4-01; published 5-4-01

TREASURY DEPARTMENT

Comptroller of the Currency

Riegle-Neal Interstate Banking and Branching Efficiency Act; implementation:

Interstate branches used primarily for deposit production; prohibition; comments due by 6-8-01; published 4-9-01

TREASURY DEPARTMENT

Thrift Supervision Office

Stock form depository institution conversion to Federal stock association; comments due by 6-7-01; published 5-8-01

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:

Appeals regulations and rules of practice—

Jurisdiction clarification and proceedings notification procedures; comments due by 6-4-01; published 4-4-01

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 700/P.L. 107–9
Animal Disease Risk Assessment, Prevention, and Control Act of 2001 (May 24, 2001; 115 Stat. 11)

H.R. 428/P.L. 107–10
Concerning the participation of Taiwan in the World Health Organization. (May 28, 2001; 115 Stat. 17)

H.R. 1696/P.L. 107–11
To expedite the construction of the World War II memorial in the District of Columbia. (May 28, 2001; 115 Stat. 19)

Last List May 30, 2001

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